

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRADY T BERRYHILL
Claimant

APPEAL NO: 12A-UI-12121-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

**OC: 08/19/12
Claimant: Appellant (2)**

Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay
Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 20, 2012, reference 01, that held he voluntarily quit without good cause on August 6, 2012, and benefits are denied. A telephone hearing was held on November 2, 2012. The claimant participated. Lori Streeter, Account Manager, participated for the employer. Claimant Exhibit A and Employer Exhibit One were received as evidence.

ISSUES:

Whether the claimant filed a timely appeal.

Whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on September 20, 2012 with an appeal deadline date of September 30 (Sunday) that is extended to Monday October 1. Claimant did not receive the decision. He went to his local workforce center to find out why. When he learned about the disqualification decision, claimant submitted an appeal to his local workforce center on October 9, 2012.

Claimant worked a series of assignments for the employer beginning September 11, 2011. His final assignment was a temp-to-hire in the paint department at Siemens starting April 23, 2012. He was off work due to an eye infection from July 30 thru August 4 and he provided both Siemens and his employer with medical documentation. He returned and worked on Monday August 6. Siemens notified him on August 7 he was being terminated due to excessive absences. The employer representative acknowledged in this hearing claimant had pointed-out.

The claimant did not contact the employer for further work within three working days. The employer placed claimant on assignment for another client beginning October 11 and he continues to work it thru the date of this hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

871 IAC 24.35(2) provides:

- (2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.
 - a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
 - b. The department shall designate personnel who are to decide whether an extension of time shall be granted.
 - c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
 - d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant filed a timely appeal.

The claimant did not have a reasonable opportunity to file a more timely appeal due to not receiving the decision. The good cause for the appeal delay is based on the failure of the department to mail it or the postal service. When claimant did not receive it, he acted within a reasonable period of less than 10 days to go to his local office and file an appeal.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge further concludes claimant was not discharged from his assignment for misconduct due to excessive unexcused absenteeism on August 7, 2012.

The voluntary quit provisions of the law do not apply where claimant was terminated and did not complete a work assignment. His termination was based on absenteeism for a medically document eye infection that is for an excusable reason and does not constitute job disqualifying misconduct.

DECISION:

The department decision dated September 20, 2012, reference 01, is reversed. The claimant filed a timely appeal. The claimant was not discharged for misconduct on August 7, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs