

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AFRIM A PECANI
Claimant

APPEAL NO: 13A-UI-04200-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 10/07/12
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 13, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits as of November 4, 2012.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer assigned the claimant to two jobs. One ended in early September 2012. The employer assigned the claimant to another job that started on November 8, 2012. The November job was as a forklift driver. The claimant had done some forklift training before, but did not receive training to drive a forklift. The claimant accepted the job because he assumed the client would formally train him as a forklift driver.

When the claimant realized he would not receive the training he expected, he quit this assignment after working on November 9, 2012. The claimant did not ask the employer for another job.

The claimant had established an unemployment insurance claim during the week of October 7, 2012. On December 13, 2012, a determination was mailed to the claimant and the employer. The claimant's determination was mailed to the residence where he had been living with his father and brother. The claimant moved to an apartment about this time. He had mail going to both addresses. He did not receive the December 13, 2012 determination.

The December 13, 2012 determination disqualified the claimant for quitting on November 8, 2012. The December 12, 2012 determination also informed the parties an appeal had to be filed or postmarked on or before December 23, 2012. The claimant did not know about the December 13, 2012, until he received an April 3, 2013 overpayment determination. The claimant filed an appeal on April 8, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the appeal was filed after the December 24, 2012 deadline for appealing expired. Since December 23 was a Sunday, the deadline to appeal was automatically extended to Monday, December 24, 2012.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). Since the claimant did not receive the December 13, 2012 determination, he did not have a reasonable opportunity to file a timely appeal.

The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The claimant quit a job he had accepted as a forklift driver because he incorrectly assumed he would receive formal training for this job. The client did not ask to end the claimant's assignment. Instead, the claimant quit this job assignment because he did not feel qualified to do to the job. The claimant did not ask the employer for another job.

The claimant quit after November 9 for personal reasons, but he did not establish he quit for reasons that qualify him to receive benefits. As of November 4, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 13, 2012 determination (reference 02) is affirmed. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant voluntarily quit an assignment after November 9 for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of November 4, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs