

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM E ROLLINS
Claimant

APPEAL NO. 08A-UI-02013-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

**OC: 12/09/07 R: 03
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 28, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 13, 2008. Claimant participated with witnesses Betty Thompson, Jermaine Johnson and Linda Williams. Employer participated by Corey Poulsen. Exhibits One and A were admitted into evidence.

ISSUE:

The issue is whether the appeal is timely. The second issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 30, 2007. Claimant was incarcerated Monday November 26, 2007. Claimant had a friend call in on his behalf. Claimant missed the next three days in a row due to incarceration. Claimant did not have anyone call in for the next three days. Employer requires a call in 59 minutes prior to the start of shift for missing work. Claimant was terminated for job abandonment. Employer's policy deems three no show absences as a voluntary quit. Claimant had a clean record of employment.

Claimant faxed his appeal to the unemployment appeals bureau on time. The appeals bureau did not receive the fax due to an error. Claimant's appeal was timely sent on the day it was due.

REASONING AND CONCLUSIONS OF LAW:

Claimant's appeal is timely as he faxed the appeal letter in on the last day it was due. The appeal was not received because of a malfunctioning fax machine. Claimant was diligent in filing his appeal and jurisdiction exists to entertain the issues.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when employer terminated the employment relationship because of job abandonment. Claimant failed to properly report three absences in a row. The absences were due to incarceration. These absences are not excusable notwithstanding claimant's good record of employment. This is job abandonment under employer's policy and Iowa law. Benefits withheld.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(4), (16) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following

reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

DECISION:

The decision of the representative dated December 28, 2007, reference 01, is affirmed. Claimant's appeal is timely. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs