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

KATRINA A BYCROFT
Claimant

APPEAL NO: 13A-UI-08306-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 06/02/13
Claimant: Appellant (2)

Section 96.5-1-j – Voluntary Quit/Re-assignment
Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 28, 2013, reference 02, that held she voluntarily quit without good cause attributable to her employer on May 29, 2013, and benefits are denied. A telephone hearing was held on August 20, 2013. The claimant participated. Valerie Hefel, Staffing Consultant, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 was received as evidence.

ISSUES:

Whether the claimant filed a timely appeal.

Whether claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on June 28, 2013 with an appeal deadline date of July 8. The claimant did not receive the decision.

Claimant made repeated calls to the department about the decision and finally talked with a department representative on July 15 or July 16. Claimant learned she was denied benefits. She submitted a faxed appeal on July 16, 2013.

Claimant began a temporary work assignment at McGraw Hill as a full-time free-lance person on October 8, 2012. She signed for the receipt of employer policy that includes a provision she notify it of job completion within three-working days for further work.

Claimant finished a work project at McGraw Hill on May 29, 2013 and she waited for another project. She sent inquiry e-mails about another project and after six days or so she was advised that no further projects would be offered and she was laid off.

Claimant contacted employer representative Ashley when she learned about the layoff at McGraw Hill about further work and none was offered. The employer witness confirmed McGraw Hill did not notify it about claimant and other temporary employees completing the job assignment. The employer later scheduled claimant for an interview and she began a new work assignment on July 17.

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 claimant filed a timely appeal as the delay was due to department error or postal service delivery. Claimant did not receive the decision and made a diligent inquiry about. She did not learn about the benefit denial decision until the day of or the day before her faxed appeal. When she learned she was denied, she filed an immediate appeal.

Iowa Code section 96.5-1-j 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, but the individual shall not be disqualified if the department finds that:
>
> j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.
>
> To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.
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> For the purposes of this paragraph:
>
> (1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.
>
> (2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The administrative law judge further concludes claimant did not receive notice she completed her job assignment until six days after her last work on May 29, 2013 at McGraw Hill, and she timely notified the employer once she did learn that is considered a voluntary leaving with good cause.

Claimant was unable to confirm she completed her work assignment at McGraw Hill on May 29 due to finishing a work project and then left in limbo as to whether work projects would be offered. This inaction by McGraw Hill is consistent with its failure to let the employer know about claimant and other employee workers. Claimant waited until June 2 to file a claim that is consistent with a person waiting after May 29 for further work.

Once claimant confirmed there was no further work project she did contact the employer who put her on another assignment within a reasonable period. Claimant should not be held accountable for the failure to McGraw Hill and the employer to communicate.

DECISION:

The department decision dated June 28, 2013, reference 02, is reversed. The claimant affected a timely appeal. Claimant voluntarily left without good cause on May 29, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

rls/css