

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER G SHAFFER
Claimant

APPEAL NO. 09A-UI-07844-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARK C DAGGY
NITE OWL PRINTING
Employer

OC: 04/05/09
Claimant: Respondent (1-R)

Section 96.5-3-a – Refusal of Suitable Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Nite Owl Printing (employer) appealed a representative's May 15, 2009 decision (reference 02) that concluded Christopher Shaffer (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for June 18, 2009, in Des Moines, Iowa. The claimant did not appear for the hearing and, therefore, did not participate. The employer participated by Mark Daggy, Owner. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a spot laborer from September 29 through October 29, 2008. There was more work on November 3, 2008. The claimant refused the work and quit to take other employment.

A disqualification decision was mailed to employer's last-known address of record on May 15, 2009. It did receive the decision on or about May 18, 2009. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 25, 2009. May 25, 2009, was a holiday. The appeal was not mailed on May 26, 2009, but not postmarked until May 27, 2009, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's appeal is timely. The administrative law judge determines it is.

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 employer mailed an appeal within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

For the reasons that follow the administrative law judge concludes the claimant did not refuse an offer of suitable work.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The employer offered work to the claimant and the claimant did not accept it because he took employment elsewhere. The claimant is qualified to receive benefits because no offer of suitable work was made to the claimant.

The issue of whether the claimant voluntarily quit work to take other employment is remanded for determination.

DECISION:

The May 15, 2009, reference 02, decision is affirmed. The employer's appeal is timely. The claimant did not accept an offer of work because he was employed elsewhere. The issue of whether the claimant voluntarily quit work to take other employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css