

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE L MORROW
Claimant

APPEAL NO. 15A-UI-03682-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 02/15/15
Claimant: Respondent (1)

Iowa Code Section 96.5(1)(j) – Temporary Employment Separation
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the March 12, 2015, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged, based on an Agency conclusion that the claimant's December 8, 2014 separation from the temporary employment firm was for good cause attributable to the firm. After due notice was issued, a hearing was held on April 21, 2015. Claimant Bruce Morrow participated. Maria Mays represented the employer and presented additional testimony through Colleen McGuinty and Vicki Eilers. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One and Department Exhibits D-1, D-2 and D-3 into evidence.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether the claimant's December 8, 2014, separation from the temporary employment firm was for good cause attributable to the firm.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 12, 2015, Iowa Workforce Development mailed a copy of the March 12, 2015, reference 01, decision to the employer's last-known address of record. The decision allowed benefits to the claimant provided he was otherwise eligible and held the employer's account could be charged, based on an Agency conclusion that the claimant's December 8, 2014 separation from the temporary employment firm was for good cause attributable to the firm. The decision contained an warning that an appeal must be postmarked by March 22, 2015 or be received by the Appeals Section by that date. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday, or legal holiday, the appeal deadline would be extended to the next working day. March 22, 2015 was a Sunday and the next working day was March 23, 2015. The employer received the reference 01 decision in a timely manner, most likely within three days of the decision's March 12, 2015 mailing date. On March 23, 2015, the employer

faxed an appeal to the Appeals Section. The second page of the employer's fax was an Availability Statement – Three Day Notice Requirement that contained signatures from the claimant and an employer representative. The first page of the fax was an appeal letter that erroneously referenced a different claimant's name and social security number. The employer had submitted multiple appeals on the same day and had erroneously not changed the name and social security number to the name and social security number of the claimant referenced in the Availability Statement. The Appeals Bureau received the faxed appeal on March 23, 2015. After the employer transmitted the appeal, the employer realized its error in attaching the appeal letter referencing a different claimant. On the morning of March 24, 2015, the employer contacted the Appeals Section and spoke with an Agency representative concerning the clerical error reflected in the appeal submission.

L A Leasing/Sedona Group is a temporary employment agency. In May 2014, the employer placed Bruce Morrow in a full-time, temporary work assignment at TM Logistics. Mr. Morrow continued to work in that assignment until December 8, 2014, at which time he completed the assignment. On December 8, L A Leasing/Sedona Group representative Vicki Eilers telephoned Mr. Morrow to notify him that the assignment was completed. During that telephone call Mr. Morrow asked Ms. Eilers for additional work. Ms. Eilers agreed to let Mr. Morrow know about additional work when it became available. Ms. Eilers did not document Mr. Morrow's request for additional work in the notes she made regarding the telephone call with Mr. Morrow.

In May 2014, the employer had Mr. Morrow sign an Availability Statement that obligated him to contact the employer within in three working days of the end of an assignment to request additional work. The policy statement indicated that failure to make the required contact would prompt the employer to deem Mr. Morrow to have voluntarily quit the employment and could affect Mr. Morrow's unemployment insurance benefit eligibility. The policy document did not contain any other policies. Mr. Morrow received a copy of the document he signed.

Mr. Morrow established a claim for benefits that was effective February 15, 2015 and received benefits.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The weight of the evidence indicates that the employer filed a timely appeal on March 23, 2015, but made a clerical error by submitting an appeal letter with another claimant's name and information on it. The fact that appeal was intended as an appeal of the decision concerning Mr. Morrow was indicated in the employer's submission of the Availability Statement signed by Mr. Morrow. The administrative law judge has jurisdiction to rule on the merits of the employer's 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.

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.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence in the record indicates that the employer and Mr. Morrow executed an end-of-assignment notification policy that complied with the requirements of the statute. Accordingly, Mr. Morrow was obligated to contact the employer within three working days of the completion of his assignment to request additional work. The weight of the evidence establishes that Mr. Morrow fulfilled the requirements of the statute when he requested additional work during the December 8, 2014 phone call. The parties offered conflicting testimony on whether Mr. Morrow requested work during that call. Mr. Morrow provided compelling testimony concerning the particulars of that conversation based on his specific recollection of the telephone call. The administrative law judge found Mr. Morrow's testimony credible. The employer testified from notes made close in time to the phone call. Unlike Mr. Morrow, Ms. Eilers did not appear to specifically recollect the telephone call. Mr. Morrow had but one person's affairs to be concerned with, his own. Whereas, Ms. Eilers likely participated in many such telephone calls with various employees. Ms. Eilers appeared to parse her words, referring repeatedly to what appeared or did not appear in the notes concerning the telephone call. So the question becomes what is more reliable, Mr. Morrow's specific recollection or Ms. Eilers' notes. Both parties have cause to color their testimony. The employer desires to limit liability for benefits. Mr. Morrow obviously desires unemployment

insurance benefits. Based on all of the evidence in the hearing, the administrative law judge found Mr. Morrows' specific recollection to be more reliable than the employer's notes.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that December 8, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 12, 2015, reference 01, decision is affirmed. The claimant's December 8, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css