

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RAUL R GUTIERREZ
610 N JEFFERSON #12
INDIANOLA IA 50125

WESTSTAFF USA INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08316-SWT
OC: 04/24/05 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 8, 2005, reference 08, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on September 9, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Ryan Laroque participated in the hearing on behalf of the employer with a witness, Zeng Cui. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant's last assignment started on March 8, 2005. He was assigned to work at Qualiz company in Des Moines, Iowa, as a production worker.

The claimant voluntarily quit employment on June 21, 2005, before the assignment at Qualiz ended. He notify the employer that he had to travel to Texas because his mother was sick. He was gone for about a week. When he returned home, he did not contact the employer about going back to work at Qualiz or to seek another assignment because he was living in Indianola, Iowa, and determined that he could not afford the gas for commuting. The employer had continuing work available for the claimant if he had not quit his job.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of June 26, 2005. A notice of claim was mailed to the employer's address of record on July 6, 2005, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of July 18, 2005. The employer's protest was mailed on July 18, 2005, as proven by the postmark on the envelope.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the employer's protest was timely. The law provides that a protest is considered filed when mailed and the date of mailing is presumed to be the date of the postmark on the envelope. 871 IAC 24.35(1)a. In this case, the protest was filed on time.

The next issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

Although the law provides that a claimant is not disqualified if he leaves employment to care for a member of their immediate family who was injured or ill or leaves for no more than ten days for compelling personal reasons, each situation requires the claimant to offer to return to work. Iowa Code Section 96.5-1-c and 96.5-1-f. In this case, the claimant came back to the Des Moines area but never offered to return to work because he decided commuting was too costly. Under the rules, a person who leaves employment due to the commuting distance to the job who was aware of the distance when hired is presumed to have voluntarily quit employment without good cause attributable to the employer. 871 IAC 24.25 (30).

The claimant, therefore, voluntarily left employment without good cause attributable to the employer and is disqualified from receiving unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated August 8, 2005, reference 08, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/pjs