

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PEDRO I GONZALEZ**  
Claimant

**APPEAL NO. 12A-UI-03543-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALL AROUND TOWN OUTDOOR  
SERVICES LLC**  
Employer

**OC: 12/13/09**  
**Claimant: Appellant (2)**

Section 96.5-1-a - Voluntary Quit for Other Employment  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 7, 2010, reference 02, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 25, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha. No one participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUES:**

Did the claimant file a timely appeal?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked as a seasonal lawn care and snow removal worker from April 2009 until sometime in February 2010. In January and February 2010, the work was part time whenever the employer had snow removal jobs. The claimant stopped working for the employer to accept a job with M & S Delivery.

An unemployment insurance decision was mailed to the claimant's last-known address of record on April 7, 2010. The decision concluded he voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by April 17, 2010.

The claimant never received the decision. He was unaware that he was disqualified until the Agency sent him an overpayment decision dated April 3, 2012. He immediately appealed the decision on April 6, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed his appeal of the disqualification late because he never received and did not know he was disqualified. He did not have a reasonable opportunity to file a timely appeal, and he promptly appealed the decision when he became aware of it. The appeal is deemed timely.

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

Iowa Code § 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund.

The claimant left work to accept other employment and performed services in that new employment. The claimant is qualified to receive unemployment insurance benefits based on his separation from employment with the employer, provided he is otherwise eligible. Pursuant to the statute, the employer's account will not be charged for benefits paid to the claimant.

**DECISION:**

The unemployment insurance decision dated April 7, 2010, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css