

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY CORNWELL
Claimant

APPEAL NO: 16A-UI-12631-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

**OC: 06/19/16
Claimant: Appellant (4)**

Section 96.5-1 a – Voluntary Leaving – Other Employment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 3, 2016, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 14, 2016. The claimant participated in the hearing. The employer faxed a statement to the Department indicating it was not participating in the hearing. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether he voluntarily left his employment to accept employment elsewhere.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on November 3, 2016. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 13, 2016. That date fell on a Sunday so the appeal was actually due November 14, 2016. The appeal was not filed until November 21, 2016, which is after the date noticed on the disqualification decision. The claimant was working out of town and did not receive the decision until shortly before he mailed his appeal to the Department. Because the claimant was not at home to receive the decision the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time laborer for Aerotek from September 19, 2016 to September 19, 2016. Continued work was available. The claimant left employment with Aerotek after one shift to accept other employment at Gudenkauf Tiling and Excavating and performed services for that employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment to accept employment elsewhere.

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. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of Aerotek shall not be charged.

DECISION:

The November 3, 2016, reference 04, decision is modified in favor of the appellant. The claimant voluntarily left his employment in order to accept other employment. Benefits are allowed provided the claimant is otherwise eligible. The account of this employer shall not be charged.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs