

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM G STARK**  
Claimant

**APPEAL NO. 10A-UI-12545-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUIZNOS SUBS  
Q FOOD ENTERPRISES LLC**  
Employer

**OC: 08/08/10  
Claimant: Respondent (4-R)**

Iowa Code Section 96.5(1) – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-time Employment  
Iowa Code Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 3, 2010, reference 04, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on October 28, 2010. Claimant participated. Brian Sibenaller represented the employer and presented additional testimony through Amber Stark. Exhibit One and Department Exhibit D-1 were received into evidence.

**ISSUES:**

Whether there is good cause to deem the employer's late protest as timely.

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: On August 12, 2010, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer at 517 N. Main Street, Carroll, Iowa 51401. The employer had taken appropriate steps on July 26, 2010 to update its address of record to 2320 N. Grant Road, Carroll, Iowa 51401. Because Workforce Development mailed the notice of claim to the old address, the employer did not receive the notice of claim until August 25, 2010, two days after the August 23, 2010 deadline for protest set out on the notice of claim. On August 25, 2010, the employer prepared a protest and mailed the protest to Workforce Development. The protest was postmarked on August 25, 2010.

Adam Stark was employed by Quiznos Subs in Carroll as a part-time crew member from June 2009 until August 2, 2010, when he voluntarily quit in response to a reprimand issued by his immediate supervisor, Store Manager Amber Stark. Mr. Stark and Ms. Stark are estranged spouses. On August 2, 2010, Ms. Stark was counseling Mr. Stark regarding his failure to

perform evening shift manager duties, when Mr. Stark became upset. Mr. Stark called Ms. Stark a bitch and cunt, ran his arm across a counter to knock some items off the counter, threw his store key at Ms. Stark and walked out. Mr. Stark had made further utterance during the incident to indicate he was indeed quitting the employment. Mr. Stark returned only for the purpose of returning his uniform(s) and collecting his final check

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, 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 is 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.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

Iowa Code section 96.6-2 provides in pertinent part:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the court to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

The evidence in the record establishes that the employer's protest was late because Workforce Development mailed the notice of claim to the wrong address, which delayed the employer's receipt of the notice until after the deadline for protest had passed. The evidence establishes that the employer did not have a reasonable opportunity to file a timely protest before the deadline. The evidence establishes that the employer's failure to file a timely protest was attributable to Workforce Development error. There is good cause to treat the protest as a timely protest. The administrative law judge has jurisdiction rule on the merits of the employer's protest and appeal.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

When an employee voluntarily quits in response to a reprimand, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(28).

Mr. Stark voluntarily quit the part-time employment without good cause attributable to the employer. Accordingly, Mr. Stark is disqualified for benefits based on wages earned through this employment until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Stark.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27. The claimant remains otherwise eligible for reduced benefits, provided he meets all other eligibility requirements. This matter is remanded for determination

of the claimant's eligibility for reduced benefits based on base period employment other than Quiznos Subs/Q Food Enterprises, L.L.C.

**DECISION:**

The Agency representative's September 3, 2010, reference 04, decision is modified as follows. The employer's protest was timely. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits based on wages he earned through this employment until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant remains otherwise eligible for reduced benefits, provided he meets all other eligibility requirements.

This matter is remanded for determination of the claimant's eligibility for reduced benefits based on base period employment other than Quiznos Subs/Q Food Enterprises, L.L.C. The redetermination of eligibility may result in a decision that the claimant has been overpaid benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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