

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID GILBERT
Claimant

APPEAL NO. 06A-UI-09800-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

X-L SPECIALIZED TRAILERS INC
Employer

**OC: 07-30-06 R: 04
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 30, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 18, 2006. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant's appeal is timely and whether he voluntarily left 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 August 30, 2006. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 9, 2006. That date fell on a Saturday so the appeal was due September 11, 2006. The appeal was not filed until October 6, 2006, which is after the date noticed on the disqualification decision. The claimant was waiting for a determination from the Tax Section regarding whether he was an independent contractor for his subsequent employer. While he should have appealed this decision regardless, his confusion over the situation is understandable and consequently the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time welder for X-L Specialized Trailers from October 2005 to July 20, 2006. He voluntarily left his employment to accept a position with Precision Roofing and performed work for that employer before being separated from that job.

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 section 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, he did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of X-L Specialized Trailers shall not be charged.

DECISION:

The August 30, 2006, reference 02, decision is reversed. The claimant's appeal is timely. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible and the account of X-L Specialized Trailers shall not be charged.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs