

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KELLY B MALLOY**  
Claimant

**PREMIER SERVICES INC**  
Employer

**APPEAL 19A-UI-05398-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/30/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury  
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On July 5, 2019, the claimant filed an appeal from the June 10, 2019, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit his employment. The parties were properly notified of the hearing. A telephonic hearing was commenced on Wednesday, July 31, 2019, and was continued to Friday, August 2, 2019. The claimant, Kelly B. Malloy, participated. The employer, Premier Services, Inc., initially participated through Erica Nuno, but no one was available to participate when the administrative law judge called on August 2, 2019. Claimant's Exhibits A and B and Department's Exhibit D-1 were received and admitted into the record without objection.

**ISSUES:**

Is the appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to employer?

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment with Premier Services, Inc., in late June 2018. Claimant was employed full-time, most recently as a temporary employee assigned to light-duty assembly line work. Claimant's employment ended on July 10, 2018, when he quit.

Claimant was preparing to have knee surgery. He took a job with this employer to try and earn some money doing light-duty work while he was awaiting surgery. Claimant only worked for a few days for this employer. Claimant saw his doctor, and his doctor told him to quit his employment and take care of his knee before the surgery. Therefore, claimant voluntarily ended his employment.

Claimant had knee surgery and has been released to return to work. Claimant registered with his local union and is awaiting work as a carpenter. Claimant did not go back to this employer and ask for work, because he no longer needs a light-duty assignment.

A disqualification decision was mailed to claimant's last known address of record on June 10, 2019. He did receive the decision within ten days, sometime before June 20, 2019. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 20, 2019. The appeal was not filed until July 5, 2019, which is after the date noticed on the disqualification decision. Claimant had difficulty faxing in his appeal. He worked with the local Iowa Workforce Development office in Sioux City to successfully fax in the appeal on July 5.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In this case, the claimant filed an appeal in a timely manner but it was not received. Claimant remained in contact with the agency and attempted to submit his appeal a second time, and again a third time. Claimant credibly testified about his efforts to file his appeal in a timely manner. Therefore, the appeal shall be accepted as timely.

Iowa Code section 96.5(1)d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) provides:

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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

In this case, claimant left his employment because of a non-work-related injury on his knee. He had knee surgery, and he has been released to return to work. However, claimant has not returned to the employer to offer his services. Therefore, claimant has not met the statutory requirements to qualify for unemployment insurance benefits. Benefits must be withheld.

**DECISION:**

The June 10, 2019, (reference 02) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn