

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHOU SRIVONGXAY

Claimant

APPEAL NO. 08A-UI-01401-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 12/23/07 R: 01
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Phou Srivongxay filed an appeal from a representative's decision dated January 16, 2008, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on February 25, 2008. The employer participated by Will Sager, Human Resources Manager. Mr. Srivongxay did not respond to the notice of hearing.

ISSUE:

The first issue is whether Mr. Srivongxay's appeal should be considered timely filed. If it is, then the issue becomes whether he was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to the parties on January 16, 2008. Workforce Development incorrectly recorded Mr. Srivongxay's address as 111 South Park Street rather than 1115 Park Street. Therefore, the disqualifying decision was mailed to the incorrect address. Mr. Srivongxay filed an appeal at his local office on February 11, 2008.

Mr. Srivongxay began working for Tyson on December 11, 2006 and worked full time as a production laborer. His last day of work was December 11, 2007. He was incarcerated on December 13, 2007 and did not thereafter return to work. Continued work would have been available if he had continued reporting for work. Mr. Srivongxay was considered to have abandoned his job and was, therefore, removed from payroll on December 17, 2007.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge must first determine if the appeal filed by Mr. Srivongxay on February 11, 2008 should be considered timely filed as required by Iowa Code section 96.6(2). It appears that there was a delay in his receipt of the decision because of an error by Workforce

Development in entering his address. Because the delay was attributable to agency error, the appeal shall be considered timely filed. As such, the administrative law judge has jurisdiction over the separation issue.

Mr. Srivongxay abandoned his job when he stopped reporting for available work. His absences from work were due to the fact that he was in jail. An individual is deemed to have left employment without good cause attributable to the employer if he becomes incarcerated. See 871 IAC 24.25(16). Since the evidence of record does not establish any good cause attributable to the employer for the separation, benefits are denied.

DECISION:

The representative's decision dated January 16, 2008, reference 01, is hereby affirmed. Mr. Srivongxay left his employment with Tyson for no 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw