

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL J PENDLETON**  
Claimant

**APPEAL 21A-UI-15400-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRADESMEN INTERNATIONAL LLC**  
Employer

**OC: 08/16/20  
Claimant: Appellant (2)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant, Michael J. Pendleton, filed an appeal from the June 18, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Tradesmen International, LLC, to accept other employment, but other employment was not obtained. The parties were properly notified of the hearing. A telephone hearing was held on August 31, 2021. The claimant participated personally. The employer did not participate. Department's Exhibit D-1 was admitted to the hearing record.

**ISSUE:**

Did the claimant quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant first became employed by the employer in August 2020. In approximately March 2021, claimant was assigned to a roofing job through the employer. That job ended around that time. The employer told claimant to "hang tight," and it would reassign him to another job as soon as it was able. Claimant began filing for unemployment benefits.

When claimant did not receive benefits, he called Austin Hermsen with the employer. Hermsen reported that the employer had, by mistake, indicated that claimant had quit employment voluntarily. Hermsen indicated that he would give claimant another chance. Claimant was assigned to a new job sometime thereafter, though he was not clear when. He continued to work for the employer as of the date of his hearing.

A disqualifying decision was mailed to claimant on June 18, 2021. Claimant never received the decision. He stated that there had been some confusion with mail around the time the decision was mailed because of another person moving out of claimant's home and changing the former occupant's address. Some of claimant's mail was directed to the former occupant's new address, he believes. After claimant had not heard about a decision from Iowa Workforce

Development, he began calling frequently. On either July 8 or 9, 2021, claimant called Iowa Workforce Development and learned of the disqualifying decision. He submitted his appeal on July 9, 2021.

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

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work. Benefits are allowed.

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, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871—24.35(1) provides:

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

(a) If transmitted via the United States Postal Service 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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—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 division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dept of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal

notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dept of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

Iowa Code § 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871—24.1(113)a provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant's unrefuted testimony is that the employer did not have work available for him due to the end of claimant's previous assignment. His return to work may have been delayed slightly by a clerical error on the employer's part. As soon as claimant was offered work, he accepted and returned to working as before. Therefore, the temporary separation was attributable to a lack of work by the employer. Benefits are allowed.

**DECISION:**

The June 18, 2021, reference 02, unemployment insurance decision is reversed. The claimant's appeal is timely. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.



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Alexis D. Rowe  
Administrative Law Judge

September 7, 2021  
Decision Dated and Mailed

ar/mh