

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK J KREPER
Claimant

APPEAL NO. 09A-UI-04916-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

**Original Claim: 11/23/08
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Patrick J. Kreper (claimant) appealed a representative's January 20, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of CRST Van Expedited, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2009. The claimant participated in the hearing. Sandy Matt, a human resource specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in May 2005. The claimant drove a truck with his girlfriend. After the claimant experienced chest pains, blurry vision, and started feeling nauseous, he had a physical in May 2008. The medical clinic asked the claimant to return so a doctor could explain the results of a test that did not appear normal. The claimant made another appointment six to eight weeks later.

The claimant felt a great deal of stress as a truck driver. About the same time the claimant did not feel well, his girlfriend decided she was going to quit working for the employer. The claimant and his girlfriend had their loads changed when their regular dispatcher was not at work. This meant the miles they thought they had been assigned were reduced. About this same time, the trucking business experienced a slowdown in business and most truckers' miles were reduced.

The last day the claimant worked as a truck driver was August 26, 2008. The claimant informed his dispatcher he was quitting because of health reasons and he wanted to go back into warehouse work.

The claimant established a claim for benefits during the week of November 23, 2008. At this time, the claimant's mailing address was Harper Woods, Michigan. On January 20, 2009, a representative's decision was mailed to the claimant and employer. This decision concluded the claimant was not qualified to receive benefits as of November 23, 2008. The decision was mailed to the claimant's Harper Woods, Michigan address.

The claimant received the January 20 decision sometime after January 30, 2009. The claimant does not know when he received the decision. The claimant did not file a written appeal until March 25, 2009. The claimant filed his appeal after he received a March 21, 2009 decision that held him overpaid in benefits he had received since November 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and that the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the January 30, 2009 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence does not establish that the claimant had a reasonable opportunity to file a timely appeal. As the result of the claimant moving, he does not know when he received the January 20, 2009 decision.

The evidence does not indicate the claimant's failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The delay occurred because the claimant moved and experienced major upheavals in his life. The claimant has the burden to establish he has a legal excuse for filing a late appeal. The claimant did not meet this burden. Therefore, the claimant did not file a timely appeal and the Appeals Section has no legal jurisdiction to address the merits of the claimant's appeal.

In the alternative, assuming the claimant established a legal excuse for filing a late appeal, a claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits employment without good cause when he leaves to seek other employment. 871 IAC 24.25(3). The claimant quit because the job as a truck driver was

too stressful for him. The claimant attributed the stress of the job to his physical ailments, which went away after he quit. The claimant established compelling personal reasons for quitting, but his reasons for quitting do not qualify him to receive benefits. As of November 23, 2008, the claimant is not qualified to receive benefits.

DECISION:

The representative's January 20, 2009 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of his appeal. In the alternative, assuming the claimant established a legal excuse for filing a late appeal, the claimant voluntarily quit has employment for compelling personal reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of November 23, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw