

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TROY E LANGE
225 GAYLE ST
WATERLOO IA 50701**

**GYP SUM SUPPLY COMPANY
1125 HARRISON AVE 2ND FL
ROCKFORD IL 61104**

**Appeal Number: 04A-UI-09972-CT
OC: 08/01/04 R: 03
Claimant: Respondent (3)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1)a – Quit for Other Employment
Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Gypsum Supply Company filed an appeal from a representative's decision dated September 1, 2004, reference 01, which held that the protest to Troy Lange's claim had not been timely filed. After due notice was issued, a hearing was held by telephone on October 20, 2004. Mr. Lange participated personally. The employer participated by Mark Harned, Payroll, and Joe Sickel, Operations Manager. The employer was represented by Mary Osborn, Corporate Counsel/Credit Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Prior to June 30, 2004, Gypsum Supply Company was represented by Personnel Planners, Inc. Notice was given to Iowa Workforce Development on June 30, 2004 that Personnel Planners, Inc. was no longer the employer's authorized representative. Mr. Lange filed a claim for job insurance benefits effective August 1, 2004. Notice of the claim was mailed to the employer on August 6, 2004 in care of Personnel Planners, Inc. The employer did not receive the notice of claim until August 26, 2004. The protest was filed by fax the same day.

Mr. Lange was employed by Gypsum Supply Company from September 23, 2002 until June 14, 2004 as a full-time material handler. He gave two week's notice that he was leaving to accept other employment. Mr. Lange was offered work by John Deere on June 7 and began the new employment on June 21. His acceptance of other employment was the sole reason for his separation and, but for the other job offer, he would have remained in the employment. Continued work with Gypsum Supply Company would have been available if he had not quit. Mr. Lange filed his claim effective August 1, 2004 because of a two-week shut down at John Deere.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether the employer's protest to the claim should be considered timely filed. The notice of claim was not sent to the employer's correct address of record as they had given notice to Workforce Development that Personnel Planners, Inc. was no longer representing them. There was a delay in the employer's receipt of the notice of claim and the delay was through no fault of the employer. The employer acted with due dispatch in filing its protest the day the notice of claim was received. For the above reasons, the protest filed on August 26, 2004 shall be deemed timely filed as required by Iowa Code section 96.6(2).

The next issue is whether Mr. Lange was separated from employment for any disqualifying reason. Mr. Lange quit in good faith for the sole purpose of accepting other employment with John Deere. Inasmuch as he had performed services in the new employment when he filed his claim for job insurance benefits, he is entitled to benefits pursuant to Iowa Code section 96.5(1)a. Benefits paid as a result of the decision herein shall not be charged to the account of Gypsum Supply Company.

DECISION:

The representative's decision dated September 1, 2004, reference 01, is hereby modified. The employer's protest is deemed timely filed. Benefits are allowed pursuant to Iowa Code section 96.5(1)a, provided Mr. Lange satisfies all other conditions of eligibility. Benefits shall not be charged to the account of Gypsum Supply Company.

cfc/kjf