

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD M BAKER
Claimant

APPEAL NO. 13A-UI-05570-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIELDSTONE RESTAURANTS CORP
Employer

OC: 02/10/13
Claimant: Appellant (1)

Section 06.5(1) – Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Donald Baker, filed an appeal from a decision dated April 26, 2013, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 17, 2013. The claimant participated on his own behalf. The employer, Fieldstone Restaurants (Fieldstone), participated by Administrative Assistant Marge Lenhart. Exhibit D-1 admitted into the record.

ISSUE:

The issue is whether the appeal is timely.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on April 26, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 6, 2013. The appeal was not filed until May 7, 2013, which is after the date noticed on the decision.

The claimant maintained he went to his local Workforce Center on May 2 and again on May 7, 2013 to file the appeal. He did not explain why he went twice and there is no notation on the appeal letter from a local workforce representative stating it was a second submission.

Donald Baker was employed by Fieldstone from June 29, 2012 until December 7, 2012 as a full-time crewmember. He was arrested and confined in jail on November 24, 2012, and not released until December 1, 2012, missing five shifts. He did not speak with the general manager until December 7, 2012, at which time he was told his employment had ended.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

The claimant maintained he made two trips to his local Workforce Center, May 2 and May 7, 2013, to file appeals. There is no notation on the appeal letter and the administrative law judge finds the claimant's testimony to have been confused and contradictory. But to err on the side of caution the appeal will be accepted as timely.

Iowa Code section 96.5-1 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.

871 IAC 24.25(16) provides:

Voluntary quit without good cause. 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:

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant was absent for five shifts due to being in jail. Under the provisions of the above Administrative Code section, this is considered a voluntary quit without good cause attributable to the employer. The claimant is disqualified.

DECISION:

The decision of the representative dated April 26, 2013, reference 02, is affirmed. Donald Baker is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs