

**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**

**Appeal Number: 06A-UI-06710-LT
OC: 06-04-06 R: 02
Claimant: Respondent (4R)**

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.

**CHARLES L SWANSON
4275 NE 10TH ST
DES MOINES IA 50313-2929**

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.

**JOHNSTON COMMUNITY
SCHOOL DISTRICT
ATTN BEVERLY LYONS
6600 NW 62ND AVE
PO BOX 10
JOHNSTON IA 50131**

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code section 96.5(1)a – Voluntary Leaving – Other Employment
Iowa Code section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed a timely appeal from the June 22, 2006, reference 01, decision that found employer's protest untimely and allowed benefits. After due notice was issued, a hearing was held on July 24, 2006. Claimant participated. Employer participated through Maureen Bjornson. Department's Exhibit D-1 was received. The issue is whether employer's protest was timely and whether claimant quit the 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: Employer timely filed its protest on the due date of June 19, 2006 at 5:51 p.m.

Claimant was employed as a full-time bus driver through April 21, 2006 when he quit to take other employment at Ankeny Community School District effective April 24, 2006. He did not present his concerns about his driving record or vandalism to his car to the human resources or personnel departments before leaving.

The issue of reasonable assurance of continued employment with the Ankeny Community School District has not yet been investigated or resolved at the claims level.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Simply because the fax was sent after business hours on the due date, June 19, does not render it received the following day. Since correspondence postmarked on the due date is considered received when postmarked even though it was not actually received on the due date; likewise, a fax transmitted on the due date but after business hours is considered received when faxed. The administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because it provided proof of a timely fax transmission. This is sufficient evidence of intent to protest any potential charges to their account.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:
 - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The June 22, 2006, reference 01, decision is modified in favor of the appellant. The employer has filed a timely protest, and the claimant quit to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (103229) shall not be charged.

REMAND:

The reasonable assurance issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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