

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D BOUYER
Claimant

APPEAL NO. 07A-UI-09434-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

**OC: 04-22-07 R: 04
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 23, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 23, 2007. The claimant did participate. The employer did participate through Amner Martinez, Assistant Manager, and Kathy Anderson, Human Resources Manager. Department's Exhibit D-1 was received. Employer's Exhibit One was received.

ISSUES:

Did the claimant file a timely appeal?

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

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at Osceola Foods beginning May 24, 2006 through May 30, 2006 when he called Amner Martinez and told her he was quitting. Since the time he quit on May 30, 2006 the employer has not heard from the claimant. The claimant alleges that he quit working for DES Staffing because he was stabbed, but the employer's records, made at the time incidents occurred, indicate that the claimant had been released to return to work after the non-work-related stabbing incident and had returned to work. Continued work was available for the claimant had he not quit.

The fact-finding decision was sent to the claimant on May 23, 2007. The claimant did receive the decision he estimates on May 27, 2007. The claimant alleges that he filed an appeal to the decision in June 2007. Iowa Workforce Development has no record of the claimant filing an appeal to any decision until October 3, 2007. The claimant waited until October before he contacted Iowa Workforce Development to discover why his appeal had not been acted upon when he filed it in June 2007. When he learned in October that Iowa Workforce Development had no record of his appeal he re-sent in the appeal on October 3, 2007.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

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. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant alleges that he did file an appeal that Iowa Workforce Development did not act upon. The administrative law judge while skeptical that an appeal was filed by the claimant in June 2007 finds that the claimant's appeal must be considered timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the

employer an opportunity to address or resolve the complaint. *Cobb v. Employment Appeal Bd.*, 506 N.W.2d 445 (Iowa 1993).

The claimant's testimony at hearing was not credible as he clearly could not remember when events occurred. The employer's notes made when incidents occurred are more credible in relation to dates events occurred. The administrative law judge is persuaded that the claimant quit working for Osceola Foods on May 30, 2006 even though continued work was available for him. The claimant had already been released to return to work after the stabbing incident when he quit. The claimant's quitting was without good cause attributable to the employer. Benefits are denied.

DECISION:

The May 23, 2007, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs