

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT D ROBINSON**  
Claimant

**APPEAL NO. 10A-UI-00912-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**Original Claim: 12/13/09  
Claimant: Appellant (4)**

Section 96.5-1-a – Voluntary Quit/Other Employment  
Section 96.6-2 – Timeliness of Appeal  
871 IAC 24.35(2) – Appeal Delay

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated January 5, 2010, reference 01, that held he voluntarily quit without good cause attributable to his employer on October 8, 2008, and that denied benefits. A telephone hearing was held on February 25, 2010. The claimant participated. The employer did not participate.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time case picker at an Iowa City location from February 4, 2007 to October 8, 2008. The claimant left his Iowa employer to transfer with the same employer in North Carolina. The claimant continued in that employment until he resigned on November 27, 2009 to move with his family living in Texas. The Iowa employer reports only the Iowa wages earned by the claimant on his claim.

The claimant did not receive the department decision. The claimant learned about the decision when he called Iowa to check on his claim. The claimant learned his department address of record was incorrect, and had it changed to reflect his correct street number/address.

The employer representative called in the day of the hearing to change the phone number to be called, but the correction was not provided to the law judge, who attempted to reach the employer witness at a different number without success. An attempt to re-open the record was not successful, as the claimant was no longer available.

## **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.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant affected a timely appeal, as the delay was due to department err regarding his correct address.

The department incorrectly recorded claimant's address, which caused it to mis-send the decision. The claimant learned about the decision when he called to check on his claim, and sent in an immediate appeal.

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.

The administrative law judge concludes the claimant voluntarily quit with good cause attributable to his employer for other employment effective October 8, 2008.

The job transfer is considered a leaving for "other employment," because the claimant left his Iowa employer to transfer to the same employer in North Carolina, who records wages in that state, not Iowa. The Iowa employer is relieved of liability, as the wage credits are charged to the trust fund. However, the employer representative should check with the North Carolina regarding the claimant's eligibility by leaving employment in that state on November 27, 2009.

**DECISION:**

The department decision dated January 5, 2010, reference 01, is modified. The claimant filed a timely appeal. The claimant voluntarily quit with good cause for other employment on October 8, 2008. Benefits are allowed, provided the claimant is otherwise eligible. Benefit payments are charged to the unemployment fund (not the employer).

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw