

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD J KOSTER
Claimant

APPEAL NO: 12A-UI-08509-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOSEPH L ERTL INC
Employer

**OC: 05/27/12
Claimant: Appellant (4)**

Section 96.5-1-a – Voluntary Quit/Other or Better 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 June 19, 2012, reference 01, that held he voluntarily quit without good cause attributable to his employer on April 13, 2012, and benefits are denied. A telephone hearing was held on August 8, 2012. The claimant participated. Jane Ertl, VP, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the claimant filed a timely appeal.

Whether claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The department decision was mailed to the claimant on June 19, 2012 with an appeal deadline date of June 29. The claimant mailed an appeal letter within the ten-day appeal period. When he did not hear anything in response to the appeal, he went to his Workforce Center and had it fax a second appeal to UI Appeals on July 16.

Claimant was re-hired by the employer on September 14, 2011 and last worked about April 13, 2012 as a full-time C & C operator at \$11.00 an hour. He was offered a job at Schmidt Quarry at \$13.00 an-hour. He gave two-week verbal notice to his employer manager he was quitting and asked he be allowed to use two weeks of accumulated vacation to cover the notice period. His request was approved and his resignation was accepted.

A short time later Schmidt Quarry told claimant it lost some contract work and it could no longer use him. He contacted his manager about rescinding his employment separation, but it was rejected.

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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant affected a timely appeal. The reason the appeal was not received within the ten-day appeal period was due to US Postal service delivery or department error. When claimant learned the appeal had not been received, he submitted a second 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 further concludes claimant voluntarily left for better employment effective April 13, 2012, but was not put to work by the other thru no fault of his own. The claimant accepted other employment and relied upon it in giving notice to the employer. When the employer accepted the resignation it severed the employment relationship.

The other employer was better employment because it paid \$13.00 an hour. The law does not require claimant to have actually performed work just that a job offer was made and accepted. NO employer's account is charged for benefits paid to claimant.

DECISION:

The department decision dated June 19, 2012, reference 01, is modified. The claimant filed a timely appeal. Claimant voluntarily left for good cause based on accepting better employment effective April 13, 2012. Benefits are allowed, provided the claimant is otherwise eligible. No employer's account is charged.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css