

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY D STATON**  
Claimant

**APPEAL NO. 12A-UI-12111-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC  
SEDONA STAFFING**  
Employer

**OC: 04/22/12  
Claimant: Respondent (2-R)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 16, 2012, reference 01, decision that allowed benefits in connection with an April 22, 2012 separation. After due notice was issued, a hearing was held on November 2, 2012. Claimant Jeremy Staton did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Colleen McGuinty, Unemployment Benefits Administrator, represented the employer and presented additional testimony through Shelby Kingery, Account Manager. Exhibit One and Department Exhibit D-1 were received into evidence.

**ISSUE:**

Whether the appeal was timely. It was.

Whether the claimant separated from the employer for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that the claimant voluntarily quit without good cause attributable to the employer and is disqualified for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer's appeal is from the May 16, 2012, reference 01, decision that allowed benefits to the claimant in connection with a April 22, 2012 separation. The decision carried a May 26, 2012 deadline for appeal. The employer faxed an appeal to the Appeals Section on May 22, 2012. Both the employer's fax records and the Appeals Section's fax log indicate that the appeals was successfully transmitted by the employer and received by the Appeals Section on May 22, 2012. The Appeals Section misplaced the appeal.

The employer is a temporary employment agency. Jeremy Staton started getting work through the employer in May 2012 and worked in three assignments. The final assignment was a full-time, temp-to-hire work assignment at Custom-Pak in Dewitt. Mr. Staton appeared for the assignment the first day. The next day, Mr. Staton notified the Sedona Staffing that he had lost

his transportation to the assignment. Mr. Staton did not appear further for work in the assignment, though continued work in the assignment was available.

Mr. Staton next checked in with the employer on May 3, 2012.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The employer's appeal was filed on May 22, 2012, when the Appeals Section received the appeal. The appeal was timely. The fact that the Appeals Section misplaced the appeal after it was received does not change the fact that the appeal was timely. The administrative law judge has jurisdiction to rule on the merits of the timely appeal.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record indicates that Mr. Staton voluntarily quit the full-time work assignment on April 26, 2012 due to a lack of transportation. Voluntary quits based on a lack of transportation are presumed to be without good cause attributable to the employer. See Iowa Admin. Code section 871 IAC 24.25(1). Mr. Staton voluntarily quit the employment without good cause attributable to the employer. Effective April 26, 2012, Mr. Staton is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The employer's appeal was timely. The Agency representative's May 16, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment effective April 26, 2012

without good cause attributable to the employer. Effective April 26, 2012, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css