

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID L CLARK**  
Claimant

**APPEAL NO: 12A-UI-09353-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INDUSTRIAL MECHANICAL  
CONTRACTORS**  
Employer

**OC: 02/19/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1)a – Voluntary Quit for Other Employment  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 16, 2012 determination (reference 04) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Marcus Cooper appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits as of June 24, 2012.

**ISSUES:**

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of February 19, 2011. The employer hired him to work as a full-time welder on March 5, 2012. The claimant understood that when he was hired, the owner agreed to "bump up" the claimant's hourly wage after he worked 30 days. In April when the claimant asked for a raise, the owner then told the claimant his supervisor had to complete a performance evaluation before he could be considered for a raise. The performance evaluation was completed in late May. The employer did not give the claimant a raise. Before a new employee can receive a raise, the employee's work performance must be satisfactory and he cannot have any write-ups or incidents.

When the claimant did not receive a raise, he started looking for another job. In late May, he accepted a job as a welder in Gurney, Illinois. He was to start the job on June 18. On June 4, the claimant told his supervisor that if he did not get a raise, he would quit because he had another job. The employer did not give the claimant the raise he wanted. The claimant worked for the employer until June 15, 2012.

The claimant's new job started on June 18. He went to the new job. The new job did not work out when the claimant's weld test did not meet that employer's standards. The claimant reopened his claim the week of June 24, 2012.

A determination was mailed to the parties on July 16, 2012. The determination held the claimant disqualified from receiving benefits because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant received the determination on approximately July 23. The claimant noticed the determination stated an appeal had to be filed or postmarked on or before June 26, 2012.

The claimant did not understand how to appeal the determination. He called his local Workforce office to ask how he needed to appeal. A representative told the claimant he needed to complete an appeal form that he could either mail to the claimant or the claimant could complete on line. The claimant asked the representative to mail the appeal form to him because he was not comfortable using a computer. The representative did not tell the claimant that he did not need the appeal form and could have just mailed a letter indicating he disagreed with the July 16 determination.

The claimant did not receive the appeal form that was mailed to him until August 2. He immediately completed the form and mailed it that same day, August 2.

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

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the appeal was filed after the July 26, 2012 deadline for appealing expired.

The next question is whether claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant had a reasonable opportunity to file a timely appeal, but he received misinformation from a Workforce representative.

The claimant's failure to file a timely appeal was due to misinformation from a Workforce representative which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The representative told the claimant that he needed to file his appeal on an appeal form. This was not correct. The claimant could have written a letter indicating he did not agree with the July 16 determination. By mailing the appeal form to the claimant, there was no way the claimant could file a timely appeal. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has legal authority to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits because he has accepted other employment, he is not disqualified from receiving benefits and the employer's account will not be charged. Iowa Code § 96.5(1)a. The law presumes a claimant is eligible when he quits after he has accepted an offer of other or better employment, even if an employment separation occurs before or after having started the new employment 871 IAC 24.28(5).

The claimant quit because he accepted a job with another employer that was to have started on June 18, 2012. Even though the new job did not ultimately work out, the claimant is qualified to receive benefits as of June 24 because he quit this job after he accepted a new job.

**DECISION:**

The representative's July 16, 2012 determination (reference 04) is reversed. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant is qualified to receive benefits as of June 24, 2012, provided he meets all other eligibility requirements. The employer is not one of the claimant's base period employer's during his current benefit year and will not be charged during this claim year.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs