

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACK R OGG**  
Claimant

**APPEAL NO: 10A-UI-01947-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**B R STORES INC**  
**SUPER SAVER/ALPS**  
Employer

**Original Claim: 07/05/09**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 20, 2009, reference 01, that held the claimant was eligible for benefits beginning July 5, 2009, as he was medically able to work. A telephone hearing was held on March 16, 2010. The claimant did not participate. Donna Bristol, HR Director, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUES:**

Whether the employer filed a timely appeal.

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 employer received the department decision that has an appeal deadline date of August 30, 2009. The employer appealed the decision by fax on August 26 to Unemployment Appeals at the correct line number, and it received a confirmation that the fax was received (OK). When the employer did not receive any response to the appeal, it submitted a further request to have its appeal heard by the department by fax on February 5, 2010.

The claimant worked as a part-time grocery stocker on the night crew from May 6, 2009 to June 30. The claimant reported to the employer that he could not work due to a non-job related injury. The employer requested he provide medical documentation as to the reason he was missing work and it submitted forms to him in order to so. On August 16, HR Director Bristol advised the claimant on August 15 that he would have until August 19 to provide the documents and request a leave from work. When the claimant failed to respond by the deadline, he was considered a voluntary quit due to job abandonment.

The claimant failed to respond to the hearing notice.

**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 employer filed a timely appeal by faxing it to Unemployment prior to the deadline. The appeal delay is due to department err by failing to acknowledge it in a timely manner.

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.

The administrative law judge further concludes the claimant voluntarily quit without good cause attributable to the employer effective June 30, 2009.

The claimant separated from employment due to a non-job-related injury, and then abandoned his job by failing to provide medical documentation for a leave of absence to cover the period he was off work. The employer gave the claimant ample opportunity to keep his job open, but the claimant failed to do so.

**DECISION:**

The department decision dated August 20, 2009, reference 01, is reversed. The employer filed a timely appeal. The claimant voluntarily quit without good cause on June 30, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/kjw