

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANTAE D KIMBLE**  
Claimant

**APPEAL NO. 10A-UI-15500-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 09/26/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-1 – Voluntary Quit  
Iowa Code § 96.6-2 – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 21, 2010 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Jim Hook, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**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 started working for the employer in January 2009. He worked full-time in the load-out department. Prior to September 30, 2010, the claimant learned he had not gotten a job he wanted. The claimant did not believe he had been treated fairly when he did not get the job, because he had more experience than the employee who got the job.

In late September, the claimant learned his mother was sick and needed him. Although the claimant's job was not in jeopardy, he did not ask the employer for time off to go to Tennessee to help his mother. The claimant told his supervisor he was going to Tennessee to help his mother, but he did not know how long he would be gone. The claimant went to Tennessee, but did not contact the employer after October 12, 2010. When the claimant had not called or reported to work for five consecutive scheduled days, October 13 through 20, the employer considered him to have abandoned his employment. The employer no longer considered him an employee as of October 20, 2010.

The claimant established a claim for benefits during the week of September 26. On October 21, 2010, a representative's determination was mailed to the claimant and employer. The

determination held the claimant was not qualified to receive unemployment insurance benefits as of September 26, 2010. The determination also informed the parties that this was the final decision unless a party filed an appeal or the appeal was postmarked no later than October 31, 2010.

The claimant was in Tennessee in October. He had a relative go to his Waterloo residence every day and forwarded his mail to Tennessee. The claimant received the October 21 determination on November 2. He mailed his appeal the next day, November 3, 2010.

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

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6-2. 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 Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 claimant's appeal was filed after the November 1, 2010 deadline for appealing expired. Since October 31 was a Sunday, the deadline to file a timely appeal is automatically extended to Monday, November 1.

The next question is whether the claimant had a reasonable opportunity to file 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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal because he did not receive it or know about it until November 2. After he received the determination, he mailed his appeal the next day.

The claimant has established a legal excuse for filing a late appeal. 871 IAC 24.35(2). Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction 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 attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, he has the burden to establish he quit his employment for reason that qualify him to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant quits employment without good cause when he leaves for compelling personal reasons and is gone more than ten days or leaves due to serious family needs. 871 IAC 24.25(20) and (23). The claimant quit his employment by failing to contact the employer after October 12. Even though the claimant left to take care of his mother, this reason does not qualify him to receive benefits. As of September 26, 2010, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's October 21, 2010 determination (reference 01) is affirmed. 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 his appeal. The claimant voluntarily quit his employment for compelling personal reasons. His reasons for quitting do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of September 26, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw