

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOGAN A PARRISH**  
Claimant

**APPEAL NO. 09A-UI-08368-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TM1 STOP LLC**  
Employer

**Original Claim: 05/03/09  
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit  
Section 96.6-2 - Timeliness of Protest and Appeal

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated May 27, 2009, reference 02, that concluded it had failed to file a timely protest regarding the claimant's separation of employment. A telephone hearing was held on June 26, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Heather Hoyt participated in the hearing on behalf of the employer. Exhibits A-1, A-2, and A-3 were admitted into evidence at the hearing.

**ISSUE:**

Did the employer file a timely appeal?

Did the employer file a timely protest?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked for the employer as a telesales employee from October 29, 2007, to February 17, 2008. After February 17, the claimant was given a leave of absence to attend military basic training. It was agreed that he would return to work no later than August 1, 2008.

The claimant never returned to work or contacted the employer regarding his failure to return to work. Effective August 12, 2008, the claimant was considered to have abandoned his job.

The claimant filed a new claim for unemployment insurance benefits effective May 3, 2009. A notice of claim was mailed to the employer's old address of record on May 7, 2009. The employer had contacted the Iowa City Workforce Development Center about changing the address to TM1 Stop LLC, 308 E Burlington St #402, Iowa City IA 52240-1747, but the address change had not been effected yet. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of May 18, 2009.

Because the address change had not been effective and because of delays by the United States Postal Service in delivering the mail, the notice of claim was not received by the employer until

May 22, 2009, which was after the due date. The employer faxed the completed notice of claim to the Agency on May 26, 2009.

An unemployment insurance decision was mailed to the employer's new address of record on May 27, 2009. The decision concluded the protest could not be accepted because it was untimely and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by June 6, 2009.

The employer did not receive the decision within the ten-day period for appealing the decision because of problems with its mail service. The decision was not received until June 10, 2009. The director of operations, Heather Hoyt, immediately faxed in a written appeal on that date.

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

The first issue in this case is whether the employer filed a timely appeal from the decision dated May 27, 2009, that concluded the protest was untimely. Iowa Code § 96.6-2 states that a decision is final unless an appeal is filed within ten days after the decision is mailed to the parties last known address.

Appeals can be deemed timely if the claimant did not have 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). In addition, the appeal is deemed timely if the failure to file a timely appeal was due to an Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. In this case, the appeal was not delivered until after the deadline due to a U.S. Postal Service error. The appeal is deemed timely. The late filing of the protest is excused for the same reasons.

The final issue is whether the claimant voluntarily quit employment without good cause attributable to the employer. The law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. Since the claimant was on a leave of absence but did not return to work as agreed after the leave of absence, he is considered to have voluntarily quit employment without good cause attributable to the employer. 871 IAC 24.22(2)j.

#### **DECISION:**

The unemployment insurance decision dated May 27, 2009, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw