

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARY L WINEBRENNER**  
Claimant

**APPEAL NO. 11O-UI-06696-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 12/26/10  
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit  
Section 96.6(2) – Timeliness of Appeals

**STATEMENT OF THE CASE:**

Kary Winebrenner filed an appeal from a representative's decision dated January 26, 2011, reference 01, which denied benefits based on his separation from Advance Services, Inc. Due notice was issued scheduling a hearing by telephone on March 8, 2011. The March 11, 2011 decision of the administrative law judge affirmed the disqualification. Mr. Winebrenner filed a further appeal with the Employment Appeal Board which, on May 18, 2011, remanded the matter for a new hearing.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on June 21, 2011. Mr. Winebrenner participated personally. The employer participated by Jessica Braun, Employee Relations Consultant. The parties waived advance notice on the issue of timeliness of the appeal.

**ISSUE:**

The first issue in this matter is whether Mr. Winebrenner's appeal was filed on time. If it is determined to be timely, the issue then becomes whether he was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. Winebrenner at his address of record on January 26, 2011. He received the decision, which listed an appeal deadline of February 5, 2011. He left his appeal with a representative of Workforce Development's Ames office on February 7, 2011. The Appeals Bureau received the appeal from the Ames office in a fax of February 8, 2011. The representative in the Ames office did not complete the section of the appeal in which the date of receipt was to be noted.

On February 10, the Appeals Bureau received an additional copy of Mr. Winebrenner's appeal from the Ames office. This copy was an exact duplicate of the one received February 8 but the

section regarding date of receipt in the local office had been completed to indicate it was received on February 4, 2011. Mr. Winebrenner denied being in the Ames office on February 4.

Mr. Winebrenner began working for Advance Services, Inc. on January 10, 2008. He worked full time for Syngenta. He was hired to work as a general laborer. He had a job description and was to perform other duties as assigned. Other duties were added periodically, the last such occasion being the summer of 2010.

On or about October 28, 2010, Mr. Winebrenner requested a raise. When one was denied, he quit. He had not been promised any raise that was not given. He had not threatened to quit over any work-related matters. He did not have other employment arranged when he quit. Continued work would have been available if he had not quit.

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

An individual has ten days in which to appeal from a representative's decision. Iowa Code § 96.6(2). The deadline stated on the January 26, 2011 decision sent to Mr. Winebrenner was February 5, 2011. Because this due date fell on a Saturday, it would be extended to the following Monday, February 7. It is clear that there has been some manipulation of the appeal received on February 8 and February 10. It was the responsibility of the local office to note the date of receipt on the appeal document so that there would be no doubt as to when it was received. There was no direct evidence to connect Mr. Winebrenner to any manipulation of the appeal. There was no evidence that he was not, in fact, at the Ames office on February 7 and filed his appeal on that date. Any doubt on the timeliness issue will be resolved in his favor.

Mr. Winebrenner quit an on-going assignment with Advance Services, Inc. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code § 96.5(1). Mr. Winebrenner quit because he did not receive a pay raise. An individual who leaves employment because of dissatisfaction with the rate of pay is presumed to have quit without good cause attributable to the employer. 871 IAC 24.25(13). A raise had not been promised and the employer was under no obligation, contractual or otherwise, to give Mr. Winebrenner a raise.

The administrative law judge appreciates that Mr. Winebrenner had assumed additional duties during the course of his employment. However, his job description called for him to perform other duties as assigned. The last addition was in the summer of 2010. Mr. Winebrenner acquiesced to the additional duties by continuing to work for several months after the last duties were added. Furthermore, he never told the employer he would quit if not relieved of certain duties that he felt were outside his normal job.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Winebrenner left his employment with Advance Services, Inc. without good cause attributable to the employer. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated January 26, 2011, reference 01, is hereby affirmed. Mr. Winebrenner quit his employment without good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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