IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TIM CRETSINGER
Claimant

TMONE LLC
Employer

APPEAL NO: 17A-UI-01907-JET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/28/16
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 31, 2017 reference 09, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 14, 2017. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into the record.

ISSUE:

The issues are whether the claimant's appeal is timely and whether he voluntarily left his employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on January 31, 2017. The claimant received the decision February 3, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 10, 2017. The appeal was not filed until February 20, 2017, which is after the date noticed on the disqualification decision. The claimant testified he completed his appeal online February 9, 2017, but the Department did not receive it. When he did not receive any further information from the Department he called February 20, 2017, and was told there was no record of his appeal. Consequently, he filed another appeal February 20, 2017. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time telemarketer for Tmone from December 5, 2016 to December 5, 2016. He voluntarily left the employment after two and one-half hours of training.

At the time of the claimant's interview he was told he would be working on an energy campaign. He was also told he could work second shift after the first week during which he would be in training. The claimant needs to work second shift so he can attend mental health medical appointments. When the claimant started training he learned the employer did not yet have the energy campaign and he would be working on a cable television client account. The claimant had done that in the past and did not want to do it again. Additionally, he was told the training would last three to four weeks during which he has to work 8:00 a.m. to 5:00 p.m. and would not be able to attend his medical appointments. When the claimant returned from morning break he

was very upset to hear some of his colleagues talking about Michael Jackson raping children. He found the conversation unprofessional and was distressed because he is a survivor of childhood sexual abuse. The claimant walked out at that time and did not return.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Given that the claimant has worked in telemarketing for ten years he needs to be more adaptable to the types of programs he will be working on and less sensitive to what co-workers might talk about on a break. That said, however, because the employer told the claimant he could work second shift after the first week when he would be in training and then reneged on that promise, the administrative law judge finds there was a substantial change in the claimant's contract of hire. Therefore, benefits are allowed.

DECISION:

The January 31, 2017, reference 09, decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/rvs