

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**STEVE L PEKIOS**

Claimant

**APPEAL 21A-UI-07456-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUILDING FASTENERS OF MINN INC**

Employer

**OC: 08/23/20**

**Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Steve Pekios (claimant) appealed an Iowa Workforce Development December 16, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Building Fasteners of Minn (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 21, 2021. The claimant participated personally. The employer was represented by Laurie Kuntz, Hearings Specialist, and participated by Craig Weires, Branch Manager, and Jeff Harris, District Manager.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from March 9, 2020, through March 12, 2020, as an full-time outside sales representative. When he was hired, the branch manager and district manager walked through the day in the life of an outside sales representative. The claimant did not raise any concerns. The employer told him that his first day of work would start at 8:00 a.m. but all other days would start at 7:30 a.m. The claimant accepted the position.

On March 9, 2020, the claimant arrived at work at 8:15 a.m. The line at the coffee shop was long. On March 10, 2021, the claimant was supposed to be in Dubuque, Iowa, by 8:30 a.m. He did not arrive in Davenport, Iowa until after 8:00 a.m., insuring a late arrival to Dubuque, Iowa. The claimant had to take his daughter to school.

On March 11, 2021, at 7:36 a.m., the claimant said he would be late because his son's girlfriend was having a baby. By 10:36 a.m., the claimant was not sure he was going to be at work that day. The employer asked the claimant if there were any other planned days off. The claimant said he had a college appointment with his daughter on March 12, 2020, at 4:00 p.m.

On March 12, 2021, the claimant was tardy. The employer had a meeting with the claimant to discuss expectations and his failure to arrive on work on any of the days he was employed. The claimant reached in his pocket, withdrew the employer's vehicle keys, and said the job was not a good fit. Continued work was available had the claimant not resigned. The claimant thought the job required more lifting that he thought it would but never mentioned this to the employer.

A disqualification decision was mailed to the parties' last known address of record on December 16, 2020. The claimant received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 28, 2020. The appeal was filed on March 12, 2021, which is after the date noticed on the decision. The claimant thought he should contact Illinois, a state he had worked in previously, instead of filing an appeal in Iowa.

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

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected

immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant, instead of following the instructions on the decision, contacted Illinois for advice.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In the alternative, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 871-24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

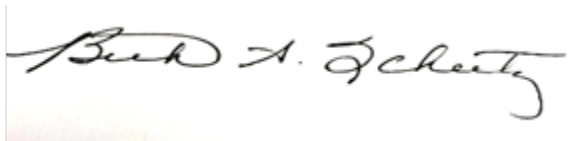
- (28) The claimant left after being reprimanded.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by words and actions. When employees quit work after having been reprimanded, their leaving is without good cause attributable to the employer. The claimant left work after having been mildly reprimanded for his tardiness and failure to follow instructions. There is no indication the employer was not forthcoming about the responsibilities of the job. The claimant's leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The claimant's and the employer's testimony was not the same. The administrative law judge finds the employer's testimony to be more credible. The employer had two eye witnesses and it kept business records regarding the claimant's behavior. The claimant had trouble remembering and his testimony was internally inconsistent.

**DECISION:**

The December 16, 2020, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.



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Beth A. Scheetz  
Administrative Law Judge

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June 1, 2021  
Decision Dated and Mailed

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