

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN B HOLLADAY
Claimant

APPEAL NO. 08A-UI-06764-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

**OC: 05/18/08 R: 03
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Steven Holladay filed an appeal from the June 19, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 7, 2008. Mr. Holladay participated. Account Manager Will Ortega represented the employer. The administrative law judge took official notice of the June 20, 2008, reference 02, decision regarding the claimant's work availability. The administrative law judge took official notice of the Agency's record of wages reported for the claimant. Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Was the claimant's appeal timely?

Was the claimant's voluntary quit was for good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 19, 2008, Workforce Development mailed the claimant the reference 01 decision denying benefits. The claimant received the decision on June 22, 2008. The decision contained a warning that the claimant's appeal from the decision must be filed by June 29, 2008. On June 27, the claimant went to the Iowa City Workforce Development Center, completed an appeal form and delivered the completed appeal form to the Workforce Development Center staff. The Workforce Development Center staff did not successfully transmit the appeal to the Appeals Section until July 25, 2008.

Steven Holladay established his relationship with Cambridge Tempositions in December 2007 and had on assignment with the temporary employment agency. The assignment was at PPC Packaging in West Branch. The assignment started on December 7, 2007. Mr. Holladay lived in Iowa City and relied upon a friend for transportation to the assignment in West Branch. The friend also performed work at PPC Packaging. On January 22, 2008, Mr. Holladay had a falling out with his friend and concluded he could no longer rely on the friend for transportation to the assignment. On January 22, Mr. Holladay contacted Cambridge Tempositions. Mr. Holladay

told the temporary employment agency that he would not be returning to the assignment because he had lost his transportation.

On January 17 and 18, Mr. Holladay had been sent home from the assignment at PPC Packaging due to a lack of work. When Mr. Holladay contacted Cambridge Tempositions on January 22, he mentioned only his loss of transportation and did not mention the days he had been sent home due to a lack of work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Whether a person voluntarily quits employment because the person has lost his transportation to the employment, the person is presumed to have voluntarily quit the employment without good cause attributable to the employer, unless the employer had previously agreed to provide transportation. See 871 IAC 24.25(1).

The greater weight of the evidence indicates that Mr. Holladay voluntarily quit the employment because he lost his transportation to the assignment. The evidence indicates there was no agreement between the employer and Mr. Holladay for the employer to provide transportation to Mr. Holladay. The evidence fails to establish that Mr. Holladay's voluntary quit was based on the a change in the contract of hire in connection with the few days where Mr. Holladay was sent home due to a lack of work. See 871 IAC 24.26(1).

Mr. Holladay voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Holladay is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Holladay.

The greater weight of the evidence indicates that Mr. Holladay's appeal was timely.

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, subsection 10, 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by any means other than mailing is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b). Workforce Development has traditional deemed appeals to be timely if the appeal is delivered to a local Workforce Development Center by the Appeal deadline. Here, the appeal was delivered to the Iowa City Workforce Development Center on June 27, 2008, prior to the June 29 deadline. The appeal was timely. Any delay in transmission from the local Workforce Development Center to the Appeals Section was attributable to Workforce Development and would establish good cause to deem the appeal timely. See 871 IAC 24.35(2). The administrative law judge has jurisdiction to hear the appeal and rule on the merits of the claimant's appeal.

DECISION:

The claimant's appeal was timely. The Agency representative's June 19, 2008, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a

been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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