

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN R HAHN

Claimant

VILLAGE INN/BAKERS SQUARE

Employer

APPEAL NO: 09A-UI-08484-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/09

Claimant: Appellant (4)

Section 96.6-2 – Timeliness of Appeal
Section 96.5-1-g – Requalification for Benefits

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 10, 2009, reference 01, that held he voluntarily quit employment without good cause attributable to the employer on February 25, 2009, and benefits are denied. A telephone hearing was held on June 30, 2009. The claimant participated. The employer did not participate in the hearing. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the claimant filed a timely appeal.

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the claimant, and having considered the evidence in the record, finds: The claimant gave two-week notice to the employer in July 2007 that he was quitting his job to go to work for Tri-City Electric (#001729), and he began employment there on July 16. The claimant was offered a one-day job assignment for the employer to work after Thanksgiving that he completed in November 2008. The department record shows the Village Inn paid the claimant \$91.00 wages in the 4th quarter of 2008, and no wages, thereafter.

The claimant experienced a temporary reduction in hours at Tri-City Electric in early March 2009, and he filed a claim with the department instruction to report any earnings. The claimant's WBA is \$194.00, and Tri-City paid the claimant wages of \$3,823.00 for the first quarter of 2009.

The claimant received the decision mailed to his address of record on April 10, 2009. The claimant delayed his appeal in order to have his former employer, the Village Inn, correct his separation of employment date that would allow him benefits from his most recent employer. When the claimant received the overpayment decision, he filed an immediate appeal.

The employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the claimant failed to file a timely appeal, because the reason for the delay is not a good cause. Although the judge is without jurisdiction to rule on the merits of the claimant's separation from the Village Inn in November 2008, the department record may be reviewed to determine whether the claimant is currently eligible for benefits.

Iowa Code section 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge concludes the claimant voluntarily left the Village Inn without good cause attributable to the employer in November 2008, but he has requalified for benefits by

earning ten times his weekly benefit amount with Tri-City Electric (\$3,823.00) prior to experiencing a work reduction that was classified as a temporary lay-off. Tri-City did not protest the claimant's notice of claim, and the claimant reported his earnings for the two-week period of his TLO. The claimant is allowed benefits, but the employer (Village Inn) is relieved of liability.

DECISION:

The department decision dated April 10, 2009, reference 01, is modified in favor of the claimant. The claimant failed to file a timely appeal, but his separation in November 2008 from the employer is not disqualifying, because he has requalified with Tri-City Electric by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs