

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSSELL C FRIEDERICK
Claimant

HAWKEYE ELECTRICAL CONTRACTORS
Employer

APPEAL 17A-UI-00152-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/15
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code Chapter 95 – Requalification

STATEMENT OF THE CASE:

Russell C. Friederick (claimant) filed an appeal from the October 10, 2016 (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on January 27, 2016. The claimant participated. Hawkeye Electrical Contractors (employer) did not participate. Claimant's Exhibit A was received. Department's Exhibit D-1 and D-2 were received.

ISSUE:

Is the claimant's appeal timely?
Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on October 10, 2016. He received the decision within the appeal period. The decision denied benefits as the claimant had voluntarily quit his employment to look for another job which is not a good cause reason attributable to the employer. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 20, 2016. The appeal was not filed until January 4, 2017, which is after the date noticed on the disqualification decision. The claimant did not file an appeal upon receipt of the decision because he had started a job with Delancey Electric Company (Delancey) and believed he would only be missing out on one week of unemployment. He believed he would requalify for benefits once he started his new job.

The claimant opened a new claim for benefits the week of November 13, 2016 after he separated from Delancey. The claimant's weekly benefit amount was \$447. The claimant earned gross wages of \$2,652 from Delancey, which is not ten times his weekly benefit amount. The claimant began employment with The State Group beginning the week of November 27, 2016. He earned gross wages in the amount of \$5,815 before being laid off again the week of December 18, 2016. The claimant reactivated his claim for benefits at that time. The claimant

has requalified for benefits since his reopen date of December 18, 2016 and the separation from Hawkeye Electrical Contractor (account number 179988).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes claimant's appeal is untimely but he has requalified for benefits since the separation and before the claim period beginning December 18, 2016.

Iowa Code § 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.

Iowa Code § 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 claimant has requalified for benefits since the separation from this employer and before the claim period beginning December 18, 2016. Accordingly, benefits are allowed effective December 18, 2016 provided he is otherwise eligible, and the account of the employer (account number 179988) shall not be charged.

DECISION:

The October 16, 2016, (reference 01) unemployment insurance decision is modified in the claimant's favor. The appeal in this case was not timely, but the claimant has requalified for benefits effective December 18, 2016 provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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