

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABU O WILLIAMS
Claimant

APPEAL NO. 07A-UI-08393-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/24/07 R: 03
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Abu O. Williams (claimant) appealed a representative's August 1, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 18, 2007. The claimant participated in the hearing. Randy Schultz appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 14, 2004. The claimant worked full-time. The claimant injured his thumb at work in December 2006. As a result of the injury, part of his thumb was amputated. The claimant was off work about a month.

After he claimant returned to work, his thumb continued to bother him. When the claimant went to the employer's nurse, the nurse wrapped his thumb and told him to take Ibuprofen. After a while, the employer scheduled an appointment for a doctor to look at the claimant's thumb again.

Prior to May 11, the claimant understood his job was in danger because of attendance issues. From May 14 through 24, the claimant called in and reported he was ill and unable to work. If the claimant had a doctor's excuse to verify these absences, the employer would only give him

one attendance point. The employer's records indicate the claimant did not call or report to work from May 28 through June 1. The employer no longer considered the claimant an employee after June 6, because he abandoned his job.

The claimant established a claim for unemployment insurance benefits during the week of June 24, 2007. On August 1, 2007, a representative's decision was mailed to the claimant and employer. The decision held the claimant was not qualified to receive unemployment insurance benefits as of June 24, 2007. The claimant did not receive a copy of the decision, even though it was sent to the correct mailing address.

When the claimant did not receive benefits he had filed for, he went to local Workforce office to find out why. On August 28, a local Workforce representative showed him a copy of the decision that held he was not qualified to receive benefits. The claimant filed his appeal that same day at his local Workforce office.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the August 11, 2007 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal, because he did not receive the representative's August 1 2007.

The claimant's failure to file a timely appeal was due to an Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant quit when he did not return to work or contact the employer any time after May 28, 2007. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive unemployment insurance benefits. Iowa Code § 96.6-2.

The claimant asserted he did not return to work because he concluded he had accumulated 14 attendance points and the employer would discharge him. The claimant may have been correct, but the employer may also have excused some absences if they occurred as the result of a work-related injury. Also, the employer may have only given the claimant one attendance point instead of several for the days he notified the employer he was ill and unable to work,

May 14 through 24. The facts reveal the claimant had personal reasons for not returning to work. The facts show the claimant abandoned his job by failing to return to work. The claimant quit for reasons that do not qualify him to receive unemployment insurance benefits. As of June 24, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 1, 2007 decision (reference 02) is affirmed. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant voluntarily quit his employment by abandoning it. The claimant quit for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 24, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw