

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANTHONY SIMMONS
Claimant

APPEAL NO: 20A-UI-11835-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STAFFING INC
Employer

OC: 05/19/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant appealed from the August 31, 2020, (reference 04) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on December 14, 2020. The claimant participated in the hearing. Employer participated through president Frank Tursi. Department's Exhibit D-1 was admitted to the record. Employer's Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 31, 2020, Iowa Workforce Development mailed a copy of the reference 04 unemployment insurance decision denying benefits to claimant's last address of record. The decision warned that an appeal was due by September 10, 2020. Claimant filed an appeal by mail that was postmarked on September 10, 2020.

Employer is a temporary staffing firm. Claimant began working for employer on October 28, 2019. Claimant was assigned to work at Windsor Windows as a full-time metal associate. The assignment ended on March 11, 2020. Employer called claimant to end the assignment because of attendance.

Employer next assigned claimant to work at Doll Distributing in the recycling center. On March 16, 2020, claimant started the first day of the assignment. About two hours later, the human resource manager at Doll Distributing told claimant it did not need claimant's help anymore.

Employer reassigned claimant to work at Mid-States with a scheduled start date of March 23, 2020. Employer makes notes of its interactions with employees in a computer program. Employer noted that claimant was scheduled to come into the office to sign paperwork regarding the Mid-States assignment on March 18, 2020. On March 18, 2020, claimant signed

orientation paperwork stating he was scheduled to start at Mid-States on March 23, 2020. There are no notes in employer's computer system noting that the start date was delayed or changed.

Claimant did not appear at Mid-States on March 23, 24, or 25, 2020.

Employer did not hear from claimant again regarding the Mid-States assignment or to request another assignment.

In May 2020, employer unsuccessfully attempted to contact claimant to offer him another assignment.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal is timely. The administrative law judge concludes it is.

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).

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).

In this case, the envelope in which claimant mailed the appeal is postmarked September 10, 2020. Therefore, the appeal is timely.

The next issue is whether claimant's separation from employment disqualifies claimant from receiving unemployment insurance benefits.

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.

Here, claimant failed to appear for the assignment and abandoned the job. Claimant's leaving the employment without notice or reason, and the failure to return to work renders the separation job abandonment without good cause attributable to the employer. Although claimant asserts employer contacted him to delay the job and then he was unable to get back in contact with employer, I do not find that testimony credible. All of the documentation completed at the time the incidents occurred supports employer's version of events. Claimant abandoned the assignment and, therefore, his job with employer.

DECISION:

The August 31, 2020, (reference 04) unemployment insurance decision is affirmed. The appeal is timely. Claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 30, 2020
Decision Dated and Mailed

cal/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.