

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**BERT B DIETER II
1012 U AVE
NEVADA IA 50201**

**R L FRENCH CORPORATION
4111 DELAWARE AVE
DES MOINES IA 50313**

**Appeal Number: 04A-UI-00208-RT
OC: 12-21-03 R: 02
Claimant: Respondent (4)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Protest)
Section 96.5-1 – Voluntarily Quitting

STATEMENT OF THE CASE:

The employer, R. L. French Corporation, filed a timely appeal from an unemployment insurance decision dated January 7, 2004, reference 03, allowing unemployment insurance benefits to the claimant, Bert B. Dieter II, because the employer's protest was not timely. After due notice was issued, a telephone hearing was held on January 28, 2004, with the claimant participating. Melissa Sherod, Payroll Manager, participated in the hearing for the employer. Department Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Although not set out in the notice of appeal, the parties permitted the administrative law judge to take evidence on and decide the issue as to whether the claimant would be disqualified to

receive unemployment insurance benefits because he voluntarily left his employment with the employer. The parties waived further notice of that issue.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit 1, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective December 21, 2003. A notice of that claim was sent to the employer on December 26, 2003 and it was received by the employer. That notice indicated that the deadline for a protest was January 5, 2004. As shown by Department Exhibit 1, the employer protested the claim on December 30, 2003 by fax.

Because the administrative law judge hereinafter concludes that the employer's protest was timely, the administrative law judge further finds: The claimant was employed by the employer as a full-time mechanic from March 16, 2003 until he voluntarily quit on July 25, 2003. The claimant quit on that date by verbally informing the employer that he was quitting. The claimant quit because he had another job with McAninch Corporation. The claimant had this job in hand at the time he quit and went to work for McAninch Corporation. In the third quarter of 2003 the claimant earned \$9,355.55 from McAninch Corporation, according to Iowa Workforce Development records.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer can demonstrate good cause for a delay. The administrative law judge concludes that the employer's protest was timely and the administrative law judge has jurisdiction to reach the remaining issue.
2. Whether the claimant's separation from employment was a disqualifying event. It was not but any unemployment insurance benefits relating to wage credits earned with the employer herein shall not be charged to the account of the employer herein but shall be charged to the unemployment compensation fund.

Iowa Code Section 96.6-2 provides in pertinent part:

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 administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had had good cause for delay in the filing of its protest. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that its protest was timely. According to Department Exhibit 1, the notice of claim was sent to the employer on December 26, 2003 with a due date of the employer's protest of January 5, 2004. Department Exhibit 1 indicates that the employer faxed its protest Iowa Workforce Development on December 30, 2003, before the due date. Accordingly, the administrative law judge concludes that the employer's protest was timely and the protest should be accepted. Therefore, the administrative law judge concludes

that he has jurisdiction to make a determination with respect to the other issue presented, namely, the separation from employment.

Iowa Code Section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The parties concede that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with good cause attributable to the employer. The claimant credibly testified that he left his employment voluntarily with the employer herein to take another job with McAninch, which he had in hand at the time he quit and which he accepted and for whom he performed services. This is confirmed by Iowa Workforce Development records. Although the voluntary quit is without good cause attributable to the employer, it is not disqualifying. The administrative law judge concludes that the claimant left his employment in good faith for the sole purpose of accepting other and better employment, which he did accept and for whom he performed services. Therefore, the administrative law judge concludes that the claimant is not disqualified to receive unemployment insurance benefits. However, any unemployment insurance benefits relating to wage credits earned with the employer herein, R. L. French Corporation, shall not be charged to the account of the employer herein but shall be charged to the unemployment compensation fund. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible but they shall not be charged to the account of the employer herein.

DECISION:

The representative's decision of January 7, 2004, reference 03, is modified. The claimant, Bert B. Dieter II, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. Any unemployment insurance benefits to which the claimant is entitled related to wage credits earned from the employer herein shall not be charged to the account of the employer herein but shall be charged to the unemployment compensation fund because the claimant left his employment voluntarily in good faith to accept other employment, which he did accept and for which he performed services. The employer's protest is timely and the protest is, therefore, accepted

dj/b