

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BETHANY RYAN
Claimant

AEROTECK INC
Employer

APPEAL 19R-UI-07349-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/07/19
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Bethany Ryan (claimant) appealed a representative's May 1, 2019 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Aerotek (employer). This administrative law judge issued a decision on August 26, 2019, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on September 16, 2019. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 9, 2019. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from December 4, 2017, through February 21, 2019. She did not sign a document indicating how she was to seek a new assignment. The claimant completed her last assignment on February 21, 2019, and sought reassignment from the employer. No work was available.

On April 7, 2019, the claimant filed for unemployment insurance benefits. She reopened her claim on July 14, 2019. In April 2019, the claimant moved to North Las Vegas, Nevada, address. She did not tell the department of the change of address and the claimant did not complete a change of address form with the United States Postal Service. The claimant received \$963.00 in unemployment insurance benefits for the three-week period ending

April 27, 2019. On April 24, 2019, the department mailed out notices to the parties for a fact-finding interview scheduled on April 30, 2019. Neither party appeared for the interview.

A disqualification decision was mailed to the claimant's last known address of record in Coralville, Iowa, on May 1, 2019. She did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 11, 2019.

On July 30, 2019, the claimant changed her address with the department and said she lived in North Las Vegas, Nevada. On July 31, 2019, she filed an appeal of the decision and listed her address as North Las Vegas, Nevada. The claimant moved to a new address in Las Vegas, Nevada, on or about August 1, 2019. The address is temporary. On October 9, 2019, she notified the department of her change of address to North Las Vegas, Nevada.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472

(Iowa 1973). She appealed the decision when she became aware of it. Therefore, the appeal shall be accepted as timely.

Secondly, the administrative law judge concludes the claimant was not separated from employment for a disqualifying reason.

Iowa Code section 96.5(1)j 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. But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Under the Iowa Code the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer did not provide the claimant with the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's May 1, 2019, decision (reference 03) is reversed. The claimant was separated from the employer for good cause attributable to the employer. Benefits are allowed provided the claimant is otherwise eligible. The claimant is cautioned to keep the department informed of her current mailing address.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs