

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFINY L EVANS**  
Claimant

**APPEAL NO. 09A-UI-18235-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADECCO USA INC**  
Employer

**OC: 12/28/08**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Leaving – Layoff Due to Lack of Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 7, 2009 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 13, 2010. Claimant participated. Employer participated through Stacey Griffith, office manager.

**ISSUE:**

The issue is whether claimant's appeal is timely and if she voluntarily left the employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on April 7, 2009. The claimant did not receive the decision prior to the appeal deadline. The first notice of disqualification was when she went to the local office about filing a claim on December 4, 2009. The appeal was sent the same day.

**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 § 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.

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). The claimant appealed at the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The remaining issue is whether claimant voluntarily left the employment with good cause attributable to the employer. The administrative law judge concludes that she was laid off due to a lack of work.

Iowa Code § 96.5-1 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.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant was laid off due to a lack of work. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

**DECISION:**

The April 7, 2009 (reference 01) decision is reversed. The claimant's appeal is timely and she was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs