

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHEMONT R JAMES**  
Claimant

**APPEAL NO. 09A-UI-17515-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INTERNATIONAL INC**  
Employer

**Original Claim: 01/18/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.4-3 – Able to and Available for Work  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 5, 2009, reference 03, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on December 29, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Laurie Sander participated in the hearing on behalf of the employer.

**ISSUE:**

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full-time for the employer on an assignment at Winegard Company from August 3 to 20, 2009.

Winegard Company was requiring workers to work overtime hours in August 2009. The claimant was about seven month pregnant at the time. Her doctor restricted the claimant to working 40 hours per week. Originally, her supervisor said Winegard Company could accommodate the restrictions without any problem, but later a supervisor informed her that Winegard Company could not accommodate her restrictions and her employment ended, as the employer did not have any other work.

The claimant had filed a claim for unemployment insurance benefits effective January 18, 2009. She filed an additional claim for unemployment insurance benefits during the week of September 27, 2009. At the time she reapplied for unemployment insurance benefits, she was

able to and available for work. Her only restriction was that she was not to work over 40 hours per week. She was able to work through October 9, 2009, when her baby was born.

After her baby was born, the claimant was restricted from working though November 20, 2009, when her doctor released her to work again. The claimant filed claims for the weeks ending October 3 through November 28, 2009.

A staffing specialist with the employer contacted the claimant on December 8, 2009, to see if she was interested in returning to work. The claimant was not available to work at the time of the call because her father was in a car accident. The staffing specialist requested that the claimant call her on December 11 to have her do a drug screen. The employer had work available starting December 14 if the claimant had contacted the employer. The claimant did not contact the employer until December 17. At that time, the supervisor for the employer at Winegard Company said there was not work available and to check back in January 2010.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim.

The claimant did not receive notice of the unemployment insurance decision dated November 5, 2009 that disqualified her from receiving unemployment insurance benefits until November 19, 2009, and she immediately appealed that day.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant's appeal should be deemed timely. The law provides that a decision becomes final if it is not appealed within ten days after it is mailed to the party's last known address. Iowa Code § 96.6-2. The rules, however, excuse the failure to file a timely appeal if it was due to an Agency error or delay or other action of the United States Postal Service. 871 IAC 24.35(2). I conclude the failure to file the appeal until November 19, 2009, is excused by the fact that she did not have notice of the disqualification decision until that day.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The claimant did not voluntarily quit employment, the employer and Winegard would not allow the claimant to continue working due to her work restrictions. The separation must be treated as a discharge.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's discharge was due to inability to work overtime due to her pregnancy, which is not for misconduct.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The claimant is eligible for benefits for the weeks ending October 3 and October 9, 2009, since she was able and available to work for the majority of the week for each week. The claimant was not released to return to work by her doctor until November 20, 2009. She only filed for one week after November 20, 2009, which was for the week ending November 28. She would be eligible for work that week, as she was able to and available for work. Since the employer had terminated her in August, she was not required to report to them for work.

There is evidence the claimant was unavailable for work sometime in December 2009. But, since the claimant has not filed claims for benefits for those weeks, it is not necessary to make any decision regarding her availability during that time.

If the claimant reapplies for benefits, she will have to demonstrate she is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3 at that time.

**DECISION:**

The unemployment insurance decision dated November 5, 2009, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits based on the reasons for her separation from employment. She is eligible for benefits for the weeks ending October 3, October 9, and November 28, 2009, but ineligible for the rest of the weeks that she filed for benefits after October 9, because she was not able and available for work due to the birth of her child.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw