

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL W HANSEN
Claimant

APPEAL NO: 13A-UI-00221-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/28/10
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit Part Time Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 6, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit this employment for reasons that did not qualify him to receive benefits. The claimant participated at the hearing. The employer notified the Appeals Section that the employer was not going to participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits as of June 8, 2010, because he quit a part-time job.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a timely appeal?

Did the claimant quit a part-time job for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of March 28, 2010. The claimant started working for the employer in May 2010. He worked part time. The claimant's last day of work was June 8, 2010. The claimant stopped working at Wal-Mart because his wife had a medical issue and she needed his help. The claimant also thought he could get a job in surveillance with another employer.

A determination was mailed to the claimant on May 6, 2011. The determination disqualified him from receiving benefits as of June 8, 2010, because he had quit for reasons that did not qualify him to receive benefits. The determination informed the parties an appeal had to be filed on or before May 16, 2011. The claimant did not receive this determination.

The claimant did not know he had been disqualified until he received a December 4, 2012 overpayment determination. He appealed on December 12, 2012.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the appeal was filed after the May 16, 2011 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). Even though the May 6, 2011 determination was addressed to the claimant's residence, the claimant does not remember receiving the determination. The claimant's failure to file a timely appeal was due to a delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has legal authority to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). The evidence establishes the claimant quit for personal reasons. Also, while the claimant thought he had a good opportunity to work for another employer, he had not been offered another job when he quit on June 8, 2010. If this employment had been full time, the claimant would not be qualified to receive benefits as of June 8, 2010, because he quit for reasons that would not qualify him to receive benefits. As a result of the claimant quitting without good cause attributable to the employer, the employer's account is not subject to charge. Iowa Code § 96.7(2)a.

When a claimant quits a part-time job without good cause, he may still be eligible to receive benefits if he is monetarily eligible to receive benefits based on wages in his base period that do not include wages from the employer. 871 IAC 24.27. This employer is not a base period employer on the claim year the claimant established during the week of March 28, 2010. This means the claimant remains monetarily eligible to receive benefits and is eligible to receive benefits as of June 8, 2010.

DECISION:

The representative's May 6, 2011 determination (reference 01) is modified in the claimant's favor. The claimant did not file a timely appeal, but he established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of this case. The claimant

voluntarily quit his employment without good cause, but he quit a part-time not a full-time job. Since the claimant is monetarily eligible to receive benefits based on wages in his base period that do not include the employer, the claimant is eligible to receive benefits as of June 8, 2010. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll