

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M ODEGAARD
Claimant

APPEAL NO. 12A-UI-12485-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 07/29/12
Claimant: Appellant (4-R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 4, 2012 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 14, 2012. Claimant participated with her former spouse and friend Eric Odegaard. Employer did not respond to the hearing notice instruction and did not participate. Department's Exhibit D-1 was admitted to the record.

ISSUES:

Was the claimant's appeal was timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Is the employer liable for benefit charges?

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 October 4, 2012. She did not receive the decision prior to the appeal deadline. She appealed by the appeal deadline of the overpayment decisions dated October 10, 2012.

Claimant quit her part-time employment with Menard because she could not handle those hours in addition to her full-time employment with Employment Connections and family responsibilities. The administrative record shows that the claimant has not requalified for benefits since this separation but reflects she may be otherwise monetarily eligible for benefits after this employer's wages are excluded from the base period.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether 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, 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 by the deadline because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). She filed the appeal within the overpayment appeal period. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but has not requalified and may be otherwise monetarily eligible.

Iowa Code section 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.

Iowa Code section 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Inasmuch as claimant quit due to family obligations, the separation is disqualifying. However, the claimant has not requalified for benefits since the separation and may be otherwise monetarily eligible according to base period wages. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 4, 2012 (reference 02), decision is modified in favor of the appellant. The claimant's appeal is timely. She voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided she is otherwise eligible. The account of this employer (016752-021) shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs