

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A FEE**  
Claimant

**APPEAL NO. 10A-UI-03766-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUALITY EGG LLC**  
Employer

**Original Claim: 01/03/10  
Claimant: Respondent (2-R)**

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Overpayment of Benefits  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 26, 2010, reference 02, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on April 27, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Betty Etnier participated in the hearing on behalf of the employer with a witness, Dan Gordon. Exhibit A1 was admitted into evidence at the hearing.

**ISSUES:**

Was the appeal in this case filed timely?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a worker in the breaker plant from January 7, 2009, to June 10, 2009. She walked off the job before the end of her shift on June 10 and never returned to work. She left work because she did not want to perform one of her job duties. There was no change in the claimant's term of employment. The last contact the claimant had with the employer was a text message sent after the claimant left work on June 10 telling her supervisor that she did not get paid enough for the stress on the job.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 3, 2010. The claimant filed for and received a total of \$1,610.00 in unemployment insurance benefits for the weeks between January 3 and February 20, 2009.

An unemployment insurance decision was mailed to the employer's last known address of record on February 26, 2010. The decision concluded the claimant voluntarily quit employment

with good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by March 8, 2010.

The employer did not receive the decision within the ten-day period for appealing the decision. Instead, it was received in the mail on March 10, 2010, and was appealed the same day.

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

The first issue in this case is whether the employer filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions 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 employer's appeal was filed after the deadline for appealing expired. However, the failure to file a timely appeal was due to 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 appeal is deemed timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5-1 and 96.5-2-a. The evidence establishes the claimant voluntarily quit and did not have good cause attributable to the employer to leave. She is disqualified until she provides proof that she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated February 26, 2010, reference 02, is reversed. The appeal in this case was timely. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/kjw