

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA G WENKE
Claimant

APPEAL NO. 07A-UI-09588-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PUMP N PIZZA INC
Employer

**OC: 09/23/07 R: 03
Claimant: Respondent (2)**

Section 96.5-1-a – Voluntary Quit to Accept Other Employment
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated October 11, 2007, reference 03, which allowed benefits. After due notice was issued, a hearing was held by telephone on October 29, 2007. The claimant participated. The employer participated by Bobbi Kruse.

ISSUE:

At issue in this matter is whether the employer's protest was timely and whether the claimant left employment to accept other employment.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by this company from June 2005 until June 14, 2006, when she voluntarily left this employment to accept new employment with Bonaparte Inn. The claimant held the position of full-time cashier/cook and was paid by the hour. Ms. Wenke provided two weeks' notice of her intention to leave employment and completed that notice. Her sole reason for leaving was to accept new employment that she considered to be better because it offered a higher hourly wage. The claimant began a new employment the following day, June 15, 2006

The employer's protest was delayed because the notice was not delivered by the U.S. Postal Service until October 10, 2007, at which time the employer immediately completed the protest and facsimile to Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the employer has established good cause for late filing of its protest in this matter. The notice of the claim was not received by the employer until October 10, 2007, and immediately completed and returned to the agency by a facsimile report.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge finds that the claimant left her employment with Pump n Pizza Inc. for the sole purpose of accepting new employment that was full-time, insured work with Bonaparte Inn, and that the claimant began a new employment with that company the following day, June 15, 2006.

Iowa Code section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

For the reasons stated herein, Ms. Wenke's leaving the Pump n Pizza Inc. was not a disqualifying event and Pump and Pizza Inc. is not chargeable for benefits paid to the claimant. (See Iowa Code section 96.5-1-a)

DECISION:

The representative's decision dated October 11, 2007, reference 03, is hereby reversed. Good cause for late protest has been shown. The claimant is eligible to receive benefits, provided she meets all other eligibility requirements. Benefits relating to wage credits the claimant earned with this employer shall be charged to the unemployment compensation fund.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw