

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE D JOHNSON

Claimant

APPEAL NO. 17A-UI-08713-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES USA LLC

Employer

OC: 06/18/17

Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Michele Johnson (claimant) appealed a representative's July 12, 2017, decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Kelly Services USA (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 13, 2017. The claimant participated personally. The employer participated by Robin McCroskey, Senior Staffing Supervisor. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services off and on from 2012 through June 14, 2017. She signed a document on January 20, 2017, indicating she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment.

The claimant was assigned to work at ADP as a full-time in-bound customer service representative from February 6, 2017, to June 14, 2017. On June 14, 2017, the claimant told the Ms. McCroskey she received an e-mail from Ms. McCroskey's co-worker telling her not to return to her assignment at ADP due to her attendance. Ms. McCroskey requested a copy of the e-mail. The claimant did not provide her with a copy of the e-mail. Ms. McCroskey investigated and found the co-worker did not send the claimant any e-mail. Ms. McCroskey also discovered ADP did not end the claimant's assignment. Later on June 14 and again on June 15, 2017, she called and talked to the claimant requesting the e-mail. The claimant did not provide the e-mail or seek reassignment.

A disqualification decision was mailed to the claimant's last known address of record on July 12, 2017. She did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 22, 2017. She faxed an appeal on July 19, 2017, but it was lost in transmission. She retransmitted her appeal on August 24, 2017, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the 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, subsections 10 and 11, 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 faxed an appeal within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit work. The administrative law judge concludes she did.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant stopped appearing for work and responding to the employer's requests. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The July 12, 2017, reference 04, decision is affirmed. The appeal in this case was timely. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs