

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA C BARAJAS**  
Claimant

**APPEAL NO: 11A-UI-15318-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 10/02/11  
Claimant: Respondent (2/R)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's November 18, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Kelli Klaas, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUES:**

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

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons that constitute work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in February 2011. She worked as a full-time laborer. Her last day of work was May 19, 2011. The claimant was scheduled to work after May 19, but she did not report to work or contact the employer after May 19, 2011. When the claimant did not call or report to work by May 26, the employer concluded she had abandoned her employment.

The claimant established a claim for benefits during the week of October 2, 2011. On November 18, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant qualified to receive benefits as of October 2, 2011. The determination also informed the parties an appeal had to be filed or postmarked on or before November 28, 2011.

The employer has been in the process of moving. In October 2011, an employee contacted the Department to change the employer's mailing address from Mount Pleasant, Iowa, to Kieler,

Wisconsin. The employer's address was not changed as the employer requested and the November 18, 2011 determination was again mailed to the Mount Pleasant, Iowa address.

Klaas did not receive the November 18 determination until November 30. On November 30, she filed the employer's appeal and again requested that the employer's address of record be changed.

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

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). 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 Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 November 28, 2011 deadline for appealing expired. The employer filed a late appeal.

The next question is whether the claimant had a reasonable opportunity to file 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 evidence establishes the employer did not have a reasonable opportunity to file a timely appeal because the determination was not mailed to the employer's address of record.

The employer's failure to file a timely appeal was due to an Agency error which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The employer established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the employer's appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence establishes the claimant quit her employment by abandoning it when she failed to report to work or contact the employer after May 19, 2011. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2). The facts do not indicate the claimant quit for reasons that qualify her to receive benefits. As of May 19, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment for benefits she may have received since October 2, 2011, will be remanded to the Claim Section to determine.

**DECISION:**

The representative's November 18, 2011 determination (reference 01) is reversed. The employer did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the employer's appeal. The employer did not layoff the claimant from work. Instead, the claimant voluntarily quit her employment on May 19, 2011, by abandoning this job. The claimant is disqualified from receiving unemployment insurance benefits as of May 19, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since October 2, 2011, is **Remanded** to the Claims Section to determine. If the claimant has earned ten times her weekly benefits since May 19, 2011, or \$1,260.00, she must provide documentation to her local Workforce office that she has requalified to receive benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs