

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA K BURKE

Claimant

APPEAL NO. 13A-UI-06556-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REBITRZER'S BAR & GRILL LLC

Employer

OC: 05/12/13

Claimant: Appellant (2)

Section 96.5-1-a – Voluntary Quit for Other Employment

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 29, 2012, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on June 16, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Joe Schulte participated in the hearing on behalf of the employer. Exhibit A-1 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?

FINDINGS OF FACT:

The claimant worked part time for the employer from April 1, 2012, to June 7, 2012. She quit her employment to accept employment with Shenanigan's Irish Pub. She worked for Shenanigan's Irish Pub from June 2012 to May 2013.

An unemployment insurance decision was mailed to the claimant's last-known address of record on November 29, 2012. The decision concluded she voluntarily quit employment without 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 December 9, 2012.

The claimant never received the decision. When she filed for a new benefit year, the Agency issued a decision on May 22, 2013, that a decision disqualifying her had been made in a previous benefit year and remained in effect. This was the first notice she had that she was disqualified based on her separation with the employer. She filed a written appeal on May 31, 2013.

REASONING AND CONCLUSIONS OF LAW:

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

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2.

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 claimant filed her appeal of the November 29, 2012, decision late because she never received the disqualification decision and did not know she was disqualified. The claimant did not have a reasonable opportunity to file a timely appeal so her appeal is deemed timely.

The next issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code § 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.

The claimant left work to accept other employment and performed services in that new employment. The claimant is qualified to receive unemployment insurance benefits based on her separation from employment with the employer, provided she is otherwise eligible. Pursuant to the statute, the employer's account will not be charged for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated November 29, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible. The employer's account will be exempt from charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css