

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ANN M DESHA**  
Claimant

**APPEAL NO: 18A-UI-11942-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENSCRAFTERS INC**  
Employer

**OC: 12/24/17**  
**Claimant: Appellant (4)**

Section 96.5-1 a – Voluntary Leaving – Other Employment  
Section 96.6-2 – Timely Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 19, 2018, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 2, 2019. The claimant participated in the hearing. The employer provided a phone number for its witness prior to the hearing but the witness was not available when called for the hearing, and the employer did not participate in the hearing. Department's Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issues are whether the claimant's appeal is timely and whether she voluntarily left her employment to accept employment elsewhere.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on November 19, 2018. The claimant never received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 29, 2018. The appeal was not filed until December 11, 2018, which is after the date noticed on the disqualification decision. Because the claimant never received the decision and filed the appeal for the overpayment decision (reference 06), the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a part-time retail sales representative for Lenscrafters from early 2017 to September 15, 2017. Continued work was available. The claimant left employment with Lenscrafters, Inc. to accept other employment at Durham and performed services for that employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment to accept employment elsewhere.

Iowa Code § 96.5-1-a 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. 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.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of Lenscrafters, Inc. shall not be charged.

**DECISION:**

The November 19, 2018, reference 02, decision is modified in favor of the appellant. The claimant's appeal is timely. The claimant voluntarily left her employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of this employer shall not be charged.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn