

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARLYN A GRISWOLD**

Claimant

**APPEAL NO. 09A-UI-10117-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JAVA JOES COFFEEHOUSE**

**JAVA JOES**

Employer

**OC: 05-24-09**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 1, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 30, 2009. The claimant did participate. The employer did participate through Amy Brehm, Owner.

**ISSUE:**

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a barista part time beginning March 23, 2008 through April 11, 2009 when she voluntarily quit her employment.

The claimant was scheduled to work on April 11, 2009 from 3:00 p.m. until close, a shift she had worked numerous times in the past. She asked for the day off so she could work at her other job, but was told that she had to find a suitable substitute to cover her shift. The claimant arranged to trade with Brittney, but was told she could not make the trade as Brittney would be in overtime status and the claimant would be in overtime status when she covered Brittney's shift. The claimant was told that if she did not work her shift on April 11, then she could consider her employment ended. The claimant was hired to work for Java Joes prior to acquiring her second job. When she was hired to work at Java Joes, the claimant did not put any limit on her hours of availability. The claimant did not show up for her shift on April 11 and the employer considered her a voluntary quit.

A disqualification decision was mailed to the claimant's address of record on July 1, 2009. The claimant did not receive the decision until July 13, 2009 after the due date for filing an appeal had passed. The appeal was sent immediately after receipt of the 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 § 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, subsection 10, 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 did not have an opportunity to appeal the fact-finder's decision because the decision was not received in time to file a timely appeal. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-1 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.

871 IAC 24.25(18) and (27) provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(18) The claimant left because of a dislike of the shift worked.

(27) The claimant left rather than perform the assigned work as instructed.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The claimant was scheduled to work and chose not to work for Java Joes but to instead work for her other employer. Java Joes was not obligated to accommodate the claimant's other work schedule and the claimant did not obtain a suitable replacement for her shift. Brittney was not suitable as the employer would have been required to pay her overtime for working the shift. The claimant chose not to work her scheduled shift and knew that if she did not do so the employer would consider her to have quit. Under such circumstances the administrative law judge cannot conclude that the claimant's leaving her employment was with good cause attributable to the employer.

While claimant's decision to quit may have been based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

**DECISION:**

The July 1, 2009, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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