

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZINETA CAVKUSIC**

Claimant

**APPEAL NO. 08A-UI-05805-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 05/04/08 R: 03  
Claimant: Appellant (4)**

Section 96.5-1 - Voluntary Quit  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated May 28, 2008, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 10, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with an interpreter, Karmela Lofthus. Jim Hook participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUE:**

Did the claimant file a timely appeal?

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

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from January 29, 2002, to May 31, 2007. The claimant had received leaves of absence in 2007 due to her husband's serious medical condition from January 15 to 22, February 15 to 22, March 12 to 18, April 13 to 23, and May 10 to 30.

The claimant resigned from her employment on May 31, 2007, because it was necessary for her to stay home to care for her husband, who had a heart attack, and their children.

After her husband had sufficiently recovered from his health conditions so that the claimant was able to return to work, she contacted the employer and offered to return to work, but she was not rehired. The last time she had contacted the employer about returning to work was in early June 2008. The claimant is not sure when the other time was that she contacted the employer about returning to work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 4, 2008. She filed weekly claims for benefits for the weeks ending May 10, May 17, and May 24. She stopped filing claims after May 24 because her husband was in the hospital and she was not able to work.

An unemployment insurance decision was mailed to the claimant's last known address of record on May 28, 2008. The decision concluded she had 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 June 7, 2008.

The claimant did not receive the decision, because her husband was in the hospital. After her husband was out of the hospital later in June 2008, the claimant discovered the decision but did not understand it, because her English language skills are poor. She found someone to translate the decision. She went into the local Workforce Development Center on June 24, 2008, reopened her claim for benefits and filed an appeal from the decision denying her benefits. Her reopened claim was made effective June 22, 2008.

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

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

Iowa Code § 96.6-2 states that a decision is final unless a party appeals the decision within ten days after the decision is mailed to the parties at their last known address. The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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 claimant's appeal was filed after the deadline for appealing expired.

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 late because she did not receive the decision until after the appeal time ran due to her husband's medical condition and she found someone to translate the decision for her. The claimant did not have a reasonable opportunity to file a timely appeal. The appeal is deemed timely.

Iowa Code § 96.5-1-c states that a person who leaves employment is not disqualified if she leaves for the purpose of taking care of an immediate family who was then injured or ill, and after family member sufficiently recovered, returned to the employer and offered to return to work as long as the person had not accepted other employment while she was off work.

The evidence establishes the claimant satisfied Iowa Code § 96.5-1-c. The claimant said she had last contacted the employer in early June 2008 but was not able to recall when the earlier time was that she contacted the employer about work. As a result, the claimant is denied benefits from May 4 through May 28, but she is qualified for unemployment insurance benefits effective June 22, 2008, the date when she reopened her claim.

**DECISION:**

The unemployment insurance decision dated May 28, 2008, reference 01, is modified in favor of the claimant. She is denied benefits from May 4 through May 28, but she is qualified for unemployment insurance benefits effective June 22, 2008, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw