

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTY L GRAY**  
Claimant

**APPEAL NO. 11A-UI-16192-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING & PROFESSIONAL**  
Employer

**OC: 10/23/11**  
**Claimant: Appellant (5)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 30, 2011, reference 02, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on January 19, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Kayla Neuhaufen participated in the hearing on behalf of the employer. Exhibits A-1 and One were admitted into evidence at the hearing.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment at Victor Manufacturing from June 20, 2011, to October 24, 2011. When the claimant was hired, she signed a statement that she would be considered to have voluntarily quit employment if she did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

The claimant was informed and understood that under the employer's work rules, employees were required to notify their supervisor if they were not able to work as scheduled. The claimant had been warned about her excessive absenteeism on October 10, 2011. She had missed work due to her mother's illness and her own illness.

The claimant was scheduled to work on October 25, 2011. She was absent from work without notifying her supervisor, Carol Thomason. She missed work because her two sons who are 19 and 16 years old were in trouble with the police. The 19-year-old son was arrested and

lodged in jail and the 16-year-old was hiding from the police. The claimant and her family were looking for him.

Thomason tried to call the claimant several times on the morning on October 25, but the claimant did not answer. Late that day, Thomason spoke to the claimant and informed her that her assignment at Victor Manufacturing had ended due to her being a no-call/no-show and her past record of absenteeism.

The claimant contacted Thomason about a week later to find out if she could return to Victor Manufacturing. Thomason said she would check with Victor Manufacturing and get back to the claimant. The claimant called Thomason a week later and Thomason told her that she could not return.

An unemployment insurance decision was mailed to the claimant's last-known address of record on November 30, 2011. 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 December 10, 2011.

The claimant never received the decision within the ten-day period for appealing the decision. She found out about the disqualification decision on December 15, 2011, and filed her appeal through her local Workforce Development Office and by fax on December 19, 2011.

#### **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 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 notice of the decision until December 15. The claimant did not have a reasonable opportunity to file a timely appeal and filed promptly afterward. The appeal is deemed timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v.

Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The claimant is not disqualified under Iowa Code § 96.5-1-j as the claimant did not complete the work assignment; she was removed from the assignment before it was complete. The claimant had no reason to believe the employer would place her on another assignment. The separation should be treated as a discharge.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule requiring employees to contact their supervisor to report their absence was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated November 30, 2011, reference 02, is modified with no change in the outcome. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css