

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDNA F COWELL**

Claimant

**APPEAL NO. 12A-UI-10117-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**

Employer

**OC: 12/18/11**

**Claimant: Appellant (1)**

Section 96.5-1 –Voluntary Quit

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 15, 2012, reference 07, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 18, 2012. Claimant participated. Employer participated by Rhonda Hester, human resources supervisor, and Marcie Porterfield, branch manager. The record consists of the testimony of Edna Cowell; the testimony of Rhonda Hester; and the testimony of Marcie Porterfield.

**ISSUES:**

Whether the claimant filed a timely appeal; and

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On May 15, 2012, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by May 25, 2012, or received by the Appeals Section on that date. The claimant's appeal was filed on July 10, 2012. The claimant was out of the country and in the Philippines until May 20, 2012. She had difficulty getting her mail after this lengthy absence.

The employer is a temporary staffing agency. The claimant began an assignment on February 13, 2012, with a manufacturing company. Her last day of work was March 15, 2012. The claimant told the employer that she had to return to the Philippines in order to comply with immigration requirements for her daughter. The claimant said she would be gone for three weeks. The employer agreed to take the claimant off the schedule. By April 5, 2012, the claimant had not contacted the employer and requested another assignment. She was considered to have quit as of that date.

The claimant returned on May 20, 2012. She was not able to return to work due to issues concerning her daughter.

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

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

Since the claimant was abroad she had no reasonable opportunity to assert an appeal while she was absent. Although the claimant returned to the United States she had difficulty obtaining her mail in a timely manner. Under these circumstances, the appeal will be considered as timely.

The next issue is whether the claimant voluntarily left for good cause attributable to the employer.

871 IAC 24.25(20) provides:

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 section 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 section 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in this case established that the claimant left her employment on March 18, 2012, for compelling personal reasons. She was required by immigration to return to the Philippines in order to arrange for her daughter's entry into the United States. She told the employer that she would be gone for three weeks. She did not come back until May 20, 2012. When the employer had not heard from the claimant she was considered a voluntary quit as of April 5, 2012. Whether this is viewed as an absence for more than ten days due to compelling reasons or a failure to return from a negotiated leave of absence, it is clear that the claimant voluntarily left for job without good cause attributable to the employer. Benefits are denied.

**DECISION:**

The decision of the representative dated May 15, 2012, reference 07, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs