

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARRELL L STARR
Claimant

APPEAL NO: 12A-UI-02561-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VITO'S OF CEDAR RAPIDS INC
Employer

OC: 02/07/10
Claimant: Appellant (4)

Iowa Code § 96.5(1) –Voluntary Quit
871 IAC 24.27 – Voluntary Quit Part Time Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 31, 2010 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Karen Bussey, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant remains eligible to receive benefits after he quit this part time job.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit a part-time job for reasons that allow him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer as a part time dishwasher in late May 2009. In June when the claimant agreed to work as a cook, he understood he would receive a raise. When the claimant did not receive a raise, he quit. The claimant then looked for another job.

The claimant established a claim during the week of February 8, 2009. He established a new benefit year during the week of February 7, 2010. On March 31, 2010, a representative's determination was mailed to the claimant and employer. The decision stated the claimant was not qualified to receive unemployment insurance benefits because he quit his employment on June 19, 2009, for reasons that do not qualify him to receive benefits.

The claimant had and still has problems receiving his mail after the flood in Cedar Rapids. He did not receive the March 31, 2010 determination. The first time he learned there was any problem with benefits he received two or more years ago was when he received a March 7,

2012 overpayment determination that held him overpaid benefits based on the March 31, 2010 determination. The claimant appealed on March 13, 2012.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). 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 Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 April 10, 2010 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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal because he did not receive the March 31, 2010 determination.

The claimant's failure to file a timely appeal was due to a delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses his delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of his appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). The claimant testified he quit because he did not receive a raise after he started working as a cook. The employer understood the claimant quit because he had another job. Since the administrative record shows the claimant did not report any wages for the weeks ending June 27 through August 15, 2009, the evidence shows the claimant did not have another job when he quit working for the employer. If the claimant had been working full time, he would not qualify to receive benefits. 871 IAC 24.25(13).

When a claimant quits a part-time job without good cause, he may still be eligible to receive benefits if he is monetarily eligible to receive benefits based on wages credits from other employers. 871 IAC 24.27. In this case, the employer is not one of his base period employers. Therefore, the claimant remains eligible to receive benefits even though he quit this part-time job for reasons that would not qualify him if this had been a full-time job.

DECISION:

The representative's March 31, 2010 determination (reference 02) is modified in the claimant's favor. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. Even though the claimant voluntarily quit a part-time job without good cause, he remains eligible to receive benefits because he is monetarily eligible to receive benefits based on the employer's in his base period. The employer's account will not be charged. The wages the claimant earned from the employer cannot be used to determine his monetary eligibility until he has been paid ten times his weekly benefit amount for insured work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs