

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01802-DWT
OC 10/26/03 R 12
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

IRENE RIOS
2101 N SHORE DR #A
SAN DIEGO CA 91913

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

PARISIAN VIRGINIA LLC
C/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Irene Rios (claimant) appealed a representative's December 1, 2003 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Parisian Virginia LLC (employer) would not be charged because the claimant had voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2004. The claimant participated in the hearing. Connie Paoli, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on December 11, 1998. She informed the employer she had to leave because she was relocating. The claimant left employment on May 1, 2002.

After the claimant talked to the employer in August 2002, the employer rehired her on August 28, 2002. On December 7, 2002, the claimant informed the employer she could not work any longer because she was moving to California with her husband. The claimant's husband is in the military and he was transferred to California.

The claimant did not file a claim for benefits until the week of October 26, 2003. On December 1, 2003, a decision was mailed to the claimant and the employer. The claimant's decision was sent to an address at which the claimant no longer resided. The decision indicated the claimant was not qualified to receive unemployment insurance benefits as of October 26, 2003.

The decision was forwarded from the claimant's old address to her new address. The claimant did not receive the December 1 decision until early February 2004. The claimant filed her appeal on February 19, 2004.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal, because it was not sent to her current address.

The failure to file a timely appeal was due to an Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the 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 the appeal.

A claimant is not qualified to receive unemployment insurance benefits she voluntarily quits without good cause attributable to the employer. Iowa Code §96.5-1. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant has voluntarily quit without good cause when she quits to accompany with her spouse to a new locality. 871 IAC 24.25(10). The claimant had compelling personal reasons for moving to California when her husband was transferred to this location by the military. For unemployment insurance purposes, this reason does not qualify the claimant to receive unemployment insurance benefits. As of October 26, 2003, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 1, 2003 decision (reference 01) is affirmed. 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 her appeal. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits as of October 26, 2003. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/b