

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELVIRA G VILLELA**

Claimant

**APPEAL NO: 12A-UI-04696-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 11/06/11**

**Claimant: Appellant (2)**

Iowa Code § 96.5(1)j – Voluntary Quit Employment with a Temporary Employment Firm

Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 29, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit working for the employer by failing to timely request another job when her assignment had been completed. The claimant participated in the hearing. Michael Payne, an unemployment insurance specialist, appeared on the employer's behalf. Patricia Vargas interpreted the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**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 do not qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant has worked four seasons for the employer. When the claimant started working an assignment in 2008, she signed a document that indicated it was her obligation after completing a job to contact the employer within three days to request another assignment. The claimant received printed information in Spanish about this requirement.

The claimant lives in Texas, but comes to Iowa in June to detassle corn. This job is usually completed by the end of the harvest season. In previous years after the claimant completed her job, detassling corn, she returned to Texas.

The claimant's most recent assignment of detassling corn started on June 20, 2011. The last day the claimant worked was September 27, 2011. The claimant asked the employer's

representative, H., if there were any more work to do. H. told her no because the harvest season was over. As she has done in the past, the claimant then went back to Texas.

The claimant established a new benefit year during the week of November 6, 2011. On March 29, 2012, a representative's determination was mailed to the claimant and employer. The determination held the claimant was not qualified to receive benefits as of September 30, 2011, because she did not timely contact the employer for another job assignment.

The claimant did not receive the March 29, 2012 determination. The claimant does not read or understand documents written in English. After the claimant received an April 16 bill that indicated she owed more than \$3,000.00, she had one of her children read the bill so she could understand what it said. Even though the March 29 determination was mailed to the claimant's current mailing address, she has problems getting her mail because she lives on the outskirts of town.

After the claimant understood she was being required to pay back benefits she had already received, she filed an appeal on April 26, 2012.

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

The law states 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). Appeals are considered filed when postmarked, if mailed. 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), *Messina v. IDJS*, 341 N.W.2d 52 Iowa 1983). Appeals can also be faxed or presented in-person at a Workforce office. Iowa Code § 17A-12.9, 871 IAC 26.4(1).

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 9, 2012 deadline for appealing expired. Since April 8 was a Sunday, the deadline to appeal was automatically extended to Monday, April 9.

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 she did not receive the determination and did not understand what the bill received meant until one of her children explained it to her.

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

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after completing the job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and that the

individual may be disqualified from receiving unemployment insurance benefits if she fails to notify the employer. Iowa Code § 96.5(1)j.

The facts establish the claimant completed the assignment she began in June 2011. When she had completed this job, she asked H. if there was any more work and was told no because the harvest season was over. Even though the employer asserted this conversation did not take place, the claimant's testimony is credible and H. did not testify at the hearing. When the claimant asked about more work, she satisfied the requirements of Iowa Code § 96.5(1)j.

In the alternative, the claimant has only worked for the employer from mid or late June to the end of harvest season. The claimant accepts the employer's offer of seasonal work and then returns to Texas. Under this scenario, the claimant's employment separation is not disqualifying because she completed the job the employer offered and that she agreed to work.

Under either scenario, based on the reasons for her employment separation on September 27, 2011, she is qualified to receive benefits as of November 6, 2011.

**DECISION:**

The representative's March 29, 2012 determination (reference 01) is reversed. 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 satisfied the requirements of Iowa Code § 96.5(1)j. As of November 6, 2011, the claimant is qualified to receive benefits because she did not quit and was not discharged for work-connected misconduct. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css