

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

NANCY J IRONS
730 NETTLE AVE
HAMPTON IA 50441-7519

CAMP DAVID INC
110 MAIN ST
IOWA FALLS IA 50126-2204

Appeal Number: 06A-UI-07082-DWT
OC: 06/04/06 R: 02
Claimant: Respondent (2)

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.

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 is based.

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 96.3-7 – Recovery of Overpayment of Benefits
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Camp David, Inc. (employer) appealed a representative's June 29, 2006 decision (reference 01) that concluded Nancy J. Irons (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation occurred for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 26, 2006. The claimant participated in the hearing. David Krogh, the owner, Paul Irwin, a line cook, and Kathy Boilerjack, the head waitress, testified 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 employer 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, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in late July 2005. The claimant worked as a part-time waitress. Even though a hostess may assign a table of customers to a waitress, Boilerjack has the authority to assign customers to another waitress.

On May 6, either the hostess or Boilerjack initially assigned the claimant three tables that were later given to another waitress, Ashley. The claimant became upset after three of her tables were reassigned to Ashley. The claimant tried to talk to Boilerjack about this in the dining room, but Boilerjack would not discuss this concern when the claimant approached her. The claimant also talked to the manager when he was busy cooking. He indicated he could not talk about her concern at that time, but would discuss it with her later.

After the claimant served all of her customers and picked up money from her customers, she was still upset about having three tables taken away from her. The claimant did not see Krogh while she was at the restaurant. When the claimant could not get at the computer to enter her sales, she gave Irwin her money and sales receipts. The claimant was emotionally upset. She was crying at work and decided she could not stay at work. The claimant told Irwin she was so stressed out that she had to leave. On May 6, the claimant left work without authorization and before she finished all of her work.

The claimant had been scheduled to work the next day, May 7, 2006. The claimant's daughter went to the restaurant and learned from Boilerjack that the employer had already replaced the claimant. The employer received information from a bus boy that the claimant told him on May 6 she quit before she walked off the job.

The claimant established a claim for unemployment insurance benefits during the week of June 4, 2006. The claimant filed claims for the weeks ending June 10 through July 22, 2006. The claimant received a total of \$342.00 in benefits. Wage credits the claimant earned from schools districts were not included when her maximum weekly benefit amount was calculated.

On June 29, 2006, a representative's decision was mailed to the parties. This decision indicated the claimant's employment separation was for nondisqualifying reasons and she was qualified to receive benefits as of June 4, 2006. The employer did not receive the June 29 decision until July 11, 2006. The employer immediately contacted the local Workforce office and requested a copy of a form to file its appeal. The employer received the form by fax on July 12. The employer immediately completed the appeal form and faxed it to the Appeals Section on July 12, 2006.

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 employer's appeal was filed on July 12 or two days after the deadline for appealing expired.

The next question is whether the employer 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 employer did not have a reasonable opportunity to file a timely appeal because the employer did not receive the June 29 decision until July 11, 2006.

The employer'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 the delay in filing an appeal. The employer established a legal excuse for filing a late appeal. Therefore, 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 if a claimant voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-1, 2-a. A preponderance of the evidence establishes the claimant voluntarily quit her employment on May 6, 2006 when she left work early without authorization. Although the claimant indicated she did not tell any employee she quit; the fact she left work early and failed to personally contact the employer the next day indicate she quit on May 6 and then had second thoughts. When the employer replaced her, the employer accepted her resignation. 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 voluntarily quits employment without good cause when she leaves because of a conflict with a supervisor. 871 IAC 24.25(22). The facts show Boilerjack reassigned three tables to another employee that had initially been assigned to the claimant. The claimant believed that Boilerjack played favorites when assigning tables and the claimant was not one of her favorites. Whether the claimant was mad or upset on May 6 does not make any difference because she became emotionally distraught when neither Boilerjack nor the general manager could immediately address her concerns. However, the claimant brought up this concern either on the dining floor or when the general manager was busy cooking. While the claimant may have had legitimate reasons for getting upset on May 6, she did not allow the employer a reasonable opportunity to address her concerns within a reasonable timeframe. Even though the claimant did not like what Boilerjack did to her on May 6, quitting for this reason does not qualify her to receive unemployment insurance benefits. Therefore, as of June 4, 2006 the claimant is not qualified to receive unemployment insurance benefits.

(Usually when claimants quit a part-time job, they may be eligible to receive benefits if they have other wage credits in their base period. 871 IAC 24.27. In this case, the only other wage credits the claimant has are from school districts that have been deleted because the schools are between academic terms. As a result, the claimant is not monetarily eligible to receive benefits because the wage credits she earned from the employer cannot be included when she has quit without good cause and had not requalified before she filed her claim for unemployment insurance benefits.)

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending June 10 through July 22, 2006. The claimant has been overpaid \$342.00 in benefits she received for these weeks.

DECISION:

The representative's June 29, 2006 decision (reference 01) is reversed. The employer established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the employer's appeal. The employer did not discharge the claimant. Instead, the employer accepted the claimant's May 6 resignation. The claimant voluntarily quit her part-time employment on May 6 for compelling personal reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 4, 2006. 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. The claimant is not legally entitled to receive benefits for the weeks ending June 10 through July 22, 2006. The claimant has been overpaid and must repay a total of \$342.00 in benefits she received for these weeks.

dlw/cs