

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA L KEY
Claimant

APPEAL NO. 09A-UI-17246-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NSK CORPORATION
Employer

**Original Claim: 03/22/09
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 1, 2009, reference 02, that held she voluntarily quit without good cause on June 15, 2009, and that denied benefits. A telephone hearing was held on December 15, 2009. The claimant participated. The employer did not participate. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the claimant and having considered the evidence in the record, finds: The claimant was laid off on March 20, 2009. The employer recalled the claimant to work on June 15.

The claimant received the department decision mailed to her address of record on September 1, 2009. The decision clearly states she is disqualified, and benefits are denied as of June 15, 2009. The appeal deadline date is September 11. The claimant faxed her appeal on November 12 after receiving the overpayment decision.

The employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the

claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the claimant failed to file a timely appeal, and the administrative law judge lacks jurisdiction to rule on the separation from employment issue.

The claimant did not have a good cause for her late appeal, which is more than two months after the deadline date. It appears the department November 3 overpayment decision prompted the claimant to appeal.

DECISION:

The department decision dated September 1, 2009, reference 02, is affirmed. The claimant failed to file a timely appeal, and the denial decision that she voluntarily quit without good cause on June 15, 2009, remains in force and effect. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw