

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA M MINERO VALDEZ**  
Claimant

**APPEAL NO: 11A-UI-14317-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS PAYROLL COMPANY**  
Employer

**OC: 09/11/11  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 3, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Patricia Rodriguez, a human resource generalist, appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not 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 qualify her to receive benefits?

**FINDINGS OF FACT:**

The claimant has worked for the employer at least since April 2010. She worked as a full-time production employee. The claimant did not understand the employer's attendance policy. The employer's attendance policy did not give employees an attendance warning unless an employee had three attendance points in a 90-day period. The employer also has a progressive disciplinary policy. When the claimant received her first written warning on August 22, she incorrectly understood the next time she was absent that she could be discharged. Even though the claimant received a written warning on August 22 for attendance issues, her job was not in jeopardy on August 22.

The claimant received the attendance warning because her childcare provider went to Mexico and the claimant could not find anyone to take care of her four children. Before August 2011, the claimant had asked the employer to transfer her to the morning shift because it was easier to find a childcare provider if she could work mornings instead of the shift she worked. The employer did not transfer the claimant to the morning shift.

The claimant could not find another childcare provider. Instead of asking the employer for a personal leave of absence so she could find a childcare provider, the claimant did not return to work after August 22. The employer did not consider the claimant an employee when she did not return to work or call the employer after August 22, 2011.

The claimant established a claim for benefits during the week of September 11, 2011. On October 3, 2011, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving unemployment insurance benefits as of September 11, 2011. The determination also informed the parties that an appeal had to be filed or postmarked on or before October 13, 2011.

The claimant did not receive the October 3, 2011 determination. She went to her local Workforce office on November 1, to find out what was going on with her claim. She then learned a letter had been mailed to her that said she was not qualified to receive benefits. The claimant filed her appeal at her local Workforce office on November 1, 2011.

#### **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 October 13 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 she did not receive it.

The claimant's 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. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to make a decision on 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. Iowa Code § 96.5(1). When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The claimant did not return to work after she received an August 22 attendance warning because she did not have anyone to take care of her children after her childcare provider went to Mexico. The law presumes a claimant leaves employment without good cause when she quits because she does not have a childcare provider. 871 IAC 24.25(17). The claimant established personal reasons for quitting. Her reasons for quitting do not qualify her to receive benefits. As of September 11, 2011, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's October 3, 2011 determination (reference 01) is affirmed. The claimant did not file a timely appeal, but she 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 personal reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of September 11, 2011. 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css