

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY R GILBERT
Claimant

APPEAL NO: 13A-UI-06736-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 11/13/11
Claimant: Respondent (2/R)

Iowa Code 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 4, 2012 (reference 03) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for reasons that did not constitute work-connected misconduct. The claimant did not participate in the hearing. Puja Datta, the lead unemployment insurance employee for TALX, and Luis Meza, a human resource supervisor, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits as of November 4, 2012.

ISSUES:

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

Did the employer discharge the claimant for reasons constituting work-connected misconduct, or did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in December 2011. The claimant's last day of work was October 6, 2012.

After October 6, the claimant called in sick on days she was scheduled to work until October 9. On October 11, 12 and 13, the claimant did not call or report to work as scheduled. The employer no longer considered her an employee as of October 15, 2012.

On November 6, 2012, the claimant signed an exit questionnaire that indicated she had quit as of as of October 8 for health reasons and because she was going back to school.

The claimant reopened her claim for benefits during the week of November 4, 2012. On December 4, 2012, a determination was mailed to the parties informing them the claimant was qualified to receive benefits and the employer's account was subject to charge.

The employer faxed an appeal to the Appeals Section on December 14, 2012. (Employer Exhibit One.) For some reason the Appeals Section did not receive or acknowledge receipt of the employer's faxed appeal. After the employer received notice that its account had been charged and no hearing had been held, the employer contacted the Department to find out why no hearing had been scheduled or held in this matter. The Appeals Section considered this date, May 30, 2013, as the date the employer appealed the December 4, 2012 determination.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 filed a timely appeal on December 14, 2012. Even though the employer's faxed appeal was successfully transmitted, the Appeals Section did not receive the fax or acknowledge receipt of the faxed appeal. Since the employer filed timely appeal, the Appeals Section has jurisdiction to address the merits of the employer's 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. The evidence establishes the claimant voluntarily quit her employment by failing to call or report to work for three days and then signing an exit questionnaire that stated she quit for health reasons and because she was going back to school.

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 law presumes a claimant quits without good cause when she is absent from work for three days without giving notice in violation of a rule, leaves to go to school or because of an illness that was not caused or aggravated by the employer. 871 IAC 24.25(3), (26) & (35). The evidence establishes the claimant quit for personal reasons, but she did not quit for reasons that qualify her to receive benefits. As of October 15, 2012, the claimant is not qualified to receive benefits.

Issues of overpayment and whether the claimant is required to pay back any regular unemployment insurance benefits or Emergency Unemployment Compensation benefits she may have received since November 5, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative December 4, 2012 determination (reference 03) is reversed. The employer filed a timely appeal. The Appeals Section has jurisdiction to address the merits of the employer's appeal. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. As of November 5, 2012, the claimant is disqualified from receiving unemployment insurance benefits. 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.

Issues of overpayment and whether the claimant is required to pay back any regular unemployment insurance benefits and Emergency Unemployment Compensation benefits she may have received since November 4, 2012, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css