

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL Z GOMEZ
Claimant

APPEAL NO. 11A-UI-11793-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RJ PERSONNEL INC
Employer

OC: 08/07/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Protest
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 2, 2011, reference 02, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on October 4, 2011. The parties were properly notified about the hearing. The claimant, Rachel Gomez, participated in the hearing. Holly Jacobi participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest of the claim?
Did Rachel Gomez voluntarily quit employment without good cause attributable to the employer?
Was she overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. When Rachel Gomez was hired, she signed a statement that she would be considered to have voluntarily quit employment if she did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

Gomez worked for the employer on an assignment as a food processor at Doña Letty Foods from July 27, 2010, to July 22, 2011. On July 22, the owner of Doña Letty Foods told her that she wasn't working out and was done working. He also said something about her being too old and not having many miles left. This unprofessional comment hurt Gomez's feelings. When she asked the owner what she was supposed to do, he told that she was done.

Gomez never contacted the employer about another assignment because she thought the owner of Doña Letty Foods had already cleared things with them. In fact, the employer was

unaware of Gomez being dismissed from the assignment until it contacted Doña Letty Foods a week later about why Gomez did not have a time sheet.

A notice of claim was mailed to the employer's address of record on August 9, 2011, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of August 19, 2011. The employer's protest was faxed on August 12, 2011, but due to some error of the agency it was not received.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest of the claim for unemployment insurance benefits. The law requires that protests be filed within 10 days after a notice of claim is mailed to the employer address of record. Iowa Code § 96.6-2.

The employer filed its protest within the time period prescribed by Iowa Code § 96.6-2. The failure to receive it was due to an Agency error, which under 871 IAC 24.35(2) would excuse the delay in filing the protest.

The next issue in this case is whether Gomez voluntarily quit employment without good cause attributable to the employer. The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

Gomez failed to notify the employer that her assignment had ended at Doña Letty Foods and ask for a new assignment. She had been advised of that requirement in a statement she signed when she was hired. She is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, Gomez has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated September 2, 2011, reference 02, is reversed. The employer's protest was timely. Rachel Gomez is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs