

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THUY NGUYEN
Claimant

APPEAL NO: 14A-UI-13089-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/09/14
Claimant: Appellant (4)

Section 96.5-1 a – Voluntary Leaving – Other Employment
Section 96.3-7 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 3, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 15, 2015. The claimant participated in the hearing with Interpreter Phung Nguyen. Sheila McGuire, Human Resources Manager and Dung Nguyen, Chinese Food Department Manager, participated in the hearing on behalf of the employer with Employer's Representative Sabrina Bentler. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether she voluntarily left her employment to accept employment elsewhere.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on December 3, 2014. The claimant never received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 13, 2014. That date fell on a Saturday so the appeal was due December 15, 2014. The claimant became anxious about the representative's decision and consequently went to her local Workforce office December 16, 2014, to inquire as to the status of her claim. At that time she learned of the representative's decision denying her benefits and filed an appeal. Under these circumstances, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a part-time food service worker and kitchen helper for Hy-Vee from September 26, 2012 to March 27, 2014. Continued work was available. The claimant left employment with Hy-Vee to accept other employment at XPho and performed services for that employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment to accept employment elsewhere.

Iowa Code § 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of Hy-Vee shall not be charged.

DECISION:

The December 3, 2014, reference 02, decision is modified in favor of the appellant. The claimant voluntarily left her employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of this employer shall not be charged.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs