

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY REES
Claimant

APPEAL NO. 11A-UI-00331-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUNSET TRAVEL LLC
Employer

OC: 11-14-10
Claimant: Respondent (4)

Section 96.5-1 a – Voluntary Leaving – Other Employment
Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 5, 2011, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 17, 2011. The claimant participated in the hearing. Joan Benz, owner, participated in the hearing on behalf of the employer with Attorney James Benz.

ISSUE:

The issue is whether the employer's protest is timely and whether the claimant 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: The claimant's notice of claim was mailed to the employer's address of record on November 22, 2010, and received by the employer's office within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer did not file a protest until December 6, 2010, which is after the ten-day period had expired. The employer went to Europe November 23, 2010, and did not return to her office until Friday, December 3, 2010. She placed the bag of mail that had accumulated while she was gone in a basket and took it home to catch up on over the weekend, at which time she discovered the notice of claim. She faxed her protest the next workday, which was Monday, December 6, 2010. The employer's explanation establishes a good-cause reason for the delay. Therefore, the protest is timely.

The claimant was employed as a part-time receptionist/office assistant for Sunset Travel from February 1, 2010 to October 8, 2010. Continued work was available. She gave the employer a two-week notice and left her employment with Sunset Travel to accept other employment at Hy-Vee.

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 section 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, she did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of Sunset Travel shall not be charged.

DECISION:

The January 5, 2011, reference 02, decision is modified in favor of the appellant. The employer's protest is timely. 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/kjw