

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATSY L SANCHEZ
Claimant

APPEAL NO. 08A-UI-07687-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BMS LOGISTICS INC
Employer

**OC: 07/06/08 R: 04
Claimant: Appellant (2)**

Section 96.5-1 - Voluntary Quit
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 30, 2008, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on September 9, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibits A and A-1 were admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?
Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a forklift operator and production line worker from February 2008 to June 24, 2008. Bernard Walker was her supervisor.

On June 23, 2008, the claimant complained to Walker after she had argued with a coworker who was not properly aligning the boxes that were being fed to the line. This was causing product to fall off the line. The coworker would not comply with the standard process and was belligerent toward the claimant. Walker refused the claimant's request to be moved so that she would not have contact with the coworker. He told her to leave the coworker alone because the coworker was a hard worker.

On June 24, 2008, the claimant was again assigned work on the production line next to the same coworker. The coworker's job was to place a cardboard divider on a row of cans in a box so that the claimant could pack another row of cans on top. The coworker appeared to be deliberately misplacing a cardboard so that the claimant had to adjust it before packing the cans in the box. This caused the line to bog down and the claimant had to push cans back to keep up. Again, angry words were exchanged between the claimant and the coworker about the coworker's conduct.

The claimant went to Walker, complained about the coworker, and asked to be moved again. Walker again refused to move either the claimant or the coworker. The claimant told Walker that since he refused to resolve the problem, she was quitting her employment. Walker did not resolve the situation.

An unemployment insurance decision was mailed to the claimant's last-known address of record on July 30, 2008. The decision concluded the claimant voluntarily left employment without good cause and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 9, 2008.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on August 8, 2008, at her local Workforce office. She was told that the appeal would be faxed to the appeals Bureau, but the representative failed to fax the appeal. Later when the claimant followed up regarding her appeal, she discovered that the appeal was never sent. The representative admitted to the mistake and faxed the appeal on August 27, 2008.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last-known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The failure to file a timely appeal was due to an Agency error, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The appeal is deemed timely.

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5-1 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.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant quit employment due to intolerable working conditions. She complained about those conditions to her supervisor, but no effective action was taken to resolve the situation. She quit with good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated July 30, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css