

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDY DIESBURG

Claimant

APPEAL NO: 10A-UI-10639-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSS HOLDINGS LLC

Employer

OC: 04-11-10

Claimant: Appellant (4)

Section 96.5-1 a – Voluntary Leaving – Other Employment

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 14, 2010, 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 September 17, 2010. The claimant participated in the hearing. Diana Roberts, Corporate Office Manager, participated in the hearing on behalf of the employer. 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 July 14, 2010. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 24, 2010. That date fell on a Saturday so the appeal was not due until July 26, 2010. The appeal was not filed until July 29, 2010, which is after the date noticed on the disqualification decision. The claimant believed she needed to go to her local office in Charles City, Iowa, to file her appeal and was unable to get there until July 29, 2010. Because the claimant misunderstood the appeal process the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a permanent part-time sales representative for Ross Holdings from May 26, 2009 to June 5, 2010. She notified the employer she was accepting a position at Cresco Care Center and the employer accepted her resignation June 9, 2010.

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 Ross Holdings shall not be charged.

DECISION:

The July 14, 2010, reference 02, decision is modified in favor of the appellant. The claimant's appeal is timely and she voluntarily left her employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of Ross Holdings shall not be charged.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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