

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETH A QUARIO**

Claimant

**APPEAL NO. 07A-UI-00178-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURGER KING #9226**

Employer

**OC: 11/19/06 R: 01  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Beth A. Quario (claimant) appealed a representative's December 22, 2006 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Burger King #9226 (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2007. The claimant responded to the hearing notice but was not available for the hearing. A message was left for the claimant to contact the Appeals Section immediately if she wanted to participate in the hearing. The claimant did not contact the Appeals Section again. Lynn Corbeil, attorney at law, appeared on the employer's behalf. Julie Anderson and Anna Kelly were available to testify on the employer's behalf.

The claimant also appealed a representative's January 17, 2007 decision (reference 04) that purported to amend the December 22, 2006 decision. The January 17, 2007 decision did not amend the previous decision, because it still disqualified the claimant from receiving benefits for voluntarily quitting her employment for reasons that do not qualify her to receive benefits. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 5, 2005. The claimant worked as a crew member. On November 21, 2006, the employer gave the claimant a written warning for attendance issues. The warning informed the claimant that if she missed any more work or was late for work again, she would be discharged. After receiving the written warning, the claimant left work on November 21 and did not return.

The claimant has a special needs child and the school superintendent went to the employer's business on November 21 to tell the claimant she needed to have her son's blood tested. The child had gotten blood on another person. The record does not indicate when the blood test had to be taken.

The claimant established a claim for unemployment insurance benefits during the week of November 19, 2006. On December 22, 2006, a representative's decision was mailed to the claimant and employer. The decision held the claimant was not qualified to receive unemployment insurance benefits as of November 19, 2006

The claimant did not receive the representative's December 22, 2006 decision because the Claims Section mailed the decision to an incorrect address. On January 3, 2007, the claimant went to her local Workforce office to find out why she had not received any benefits. The claimant then learned she had been disqualified. On January 3, 2007, the claimant filed an appeal from the December 22, 2006 (reference 02) decision.

On January 17, 2007, the Claims issued an amended decision (reference 04). The Claims Section decided to hold another fact-finding interview after the claimant appealed the December 22, 2006 decision because the December 22 decision had been sent to the wrong address. The January 17, 2007 (reference 04) decision was sent to the claimant's correct mailing address, but the decision still concluded the claimant had voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant appealed the January 17 decision on January 23, 2007.

#### **REASONING AND CONCLUSIONS OF LAW:**

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal from the December 22, 2006 (reference 02) was filed one day after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record establishes the claimant did not have a reasonable opportunity to file a timely appeal. The claimant's failure to file a timely appeal was due to an Agency error, which under 871 IAC 24.35(2) excuses her delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant quit by leaving work on November 21 and failing to return to work. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant has voluntarily quit without good cause when she leaves employment after having received a reprimand. 871 IAC 24.25(28). The record establishes the claimant knew

her job was in jeopardy for attendance issues on November 21. The claimant still left work and did not return. A preponderance of the record does not establish that the claimant had a justifiable reason for not working as scheduled on November 21. Without the claimant's testimony, it is not known the time limit, if any, she had to obtain a blood test on her child. Based on the information in the administrative record, the claimant did not establish that she quit her employment for reasons that qualify her to receive unemployment insurance benefits. As of November 19, 2006, the claimant is not qualified to receive unemployment insurance benefits.

While the Claims Section admitted it made a mistake by sending the December 22 decision to the wrong address, the claimant had already **appealed** the decision. There is no evidence the Claims Section had any legal jurisdiction to issue the January 17, 2007 decision that **again** disqualified the claimant from receiving benefits because she voluntarily quit her employment. As a result, the January 17, 2007 (reference 04) decision shall be deleted because a decision concerning the claimant's employment separation was issued on December 22, 2006. The only effect the January 17, 2007 decision had was to give the claimant a new appeal deadline, when she already had legal excuse for filing a late appeal.

If the claimant had not appealed the December 22, 2006 decision, reissuing a disqualification decision to the **correct** mailing address would have been appropriate. Under the facts of this case, the Claims Section had no legal authority to issue the January 17, 2007 decision.

**DECISION:**

The representative's January 17, 2007, decision (reference 04) shall be deleted because the Claims Section had no legal authority to issue this decision when the claimant had already appealed a December 22, 2006 decision and the January 17, 2007, decision just reaffirmed that the claimant was disqualified from receiving benefits because she had voluntarily quit her employment. The January 17, 2007 decision did not amend the December 22, 2006 decision. The representative's December 22, 2006 decision (reference 02) is affirmed. The claimant established a legal excuse for filing a late appeal. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of November 19, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw