

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA HOWELL
Claimant

APPEAL NO: 13A-UI-13947-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

M D INVESTMENTS LLC
Employer

OC: 06/23/13
Claimant: Appellant (4/R)

Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-Time Employment
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Samantha Howell (claimant) appealed an unemployment insurance decision dated November 25, 2013, reference 02, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with M.D. Investments, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2014. The claimant participated in the hearing. The employer provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal, and if so, whether the claimant's voluntary separation from her part-time employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on November 25, 2013. 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 5, 2013. The appeal was not filed until December 19, 2013, which is after the date noticed on the disqualification decision.

The claimant was employed as a part-time host from July 17, 2013, through July 20, 2013, when she voluntarily quit because she did not receive sufficient training and because the manager sent her home early after she spilled soda on the floor. She was scheduled for an eight hour shift but was sent home after she had only worked an hour and a half.

The claimant had a disqualifying separation from Central Iowa KFC in June 2013 but has requalified since that separation.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant did not receive the decision within the ten-day time period allowed for the appeal. She did file an appeal immediately upon receiving information she had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the reasons for the claimant's separation from her part-time employment qualify her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code § 96.6-2. She quit after two days of employment because she did not believe she had sufficient training and did not think she was getting enough hours. The claimant did not work long enough to know whether she would receive more training and/or more hours. Her separation was personal in nature and not attributable to the employer.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or her maximum weekly benefit amount.

The claimant's records should reflect that she has requalified since her disqualifying separation from Central Iowa KFC.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated November 25, 2013, reference 02, is modified in favor of the appellant. The claimant voluntarily quit her part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what her

maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css