

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEFINA LOPEZ

Claimant

APPEAL NO. 09A-UI-17588-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY

Employer

Original Claim: 08/09/09

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Josefina Lopez (claimant) appealed a representative's September 11, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Swift & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 5, 2010. The claimant participated personally through Isaura Broste, Interpreter. The employer participated by Tony Luse, Employment Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 13, 2008, as a full-time production worker. The claimant signed for receipt of the Spanish employer's handbook on October 13, 2008. The handbook contains a policy that considers a worker to have voluntarily quit work who is absent without notice for three or more days.

The claimant requested three weeks off to visit Mexico. The request was denied. The claimant requested one week off to go to Mexico because her mother was ill. The employer granted the request from July 25 through August 1, 2009. The claimant was to return on August 3, 2009. The claimant's mother died on July 25, 2009. The claimant did not call the employer to request more time. She attempted to fax a copy of the death certificate, but the employer did not receive it. The claimant did not appear for work or notify the employer of her absence on August 3, 4, 5, 6, or 7, 2009. On August 10, 2009, the claimant returned to work. The employer considered the claimant to have resigned. Continued work was available had the claimant not resigned.

A disqualification decision was mailed to the claimant's address of record on September 11, 2009. The claimant did not receive the decision. She received an overpayment decision on or about November 16, 2009, and appealed that decision on November 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision, because the decision was not received. Without 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 timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit work without good cause attributable to the employer. The administrative law judge concludes she did.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer

has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was absent from work for five days without giving notice to the employer. The employer has a rule that if the employee is absent without notice to the employer for three days, the employee is deemed to have voluntarily quit. The claimant is deemed to have voluntarily quit based on her absence from work for three days without giving notice to the employer. There is no evidence of good cause attributable to the employer.

DECISION:

The representative's September 11, 2009 decision (reference 01) is affirmed. The claimant's appeal is timely. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw