

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHELLE A LYON
Claimant

APPEAL NO. 15A-UI-09449-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES POSTAL SERVICE
Employer

OC: 12/07/14
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Rachelle Lyon (claimant) appealed a representative's July 29, 2015, decision (reference 06) that concluded she was eligible to receive reduced unemployment insurance benefits after her voluntarily part-time quit work with the United States Postal Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 10, 2015. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. 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 considered all of the evidence in the record, finds that: The claimant was hired on May 19, 2015, as a part-time clerk. At the time she was hired she was told she would work ten to twelve hours per week, she would receive classroom training, and have to pass a test to qualify for the position. The claimant did not receive classroom training or have to take a test. The employer had her working twenty to thirty hours per week. The claimant could not handle the workload due to the number of hours. On June 26, 2015, the claimant gave her two-week notice of resignation. Her last day of work was July 10, 2015. Continued work was available had the claimant not resigned.

A disqualification decision was mailed to the claimant's last-known address of record on July 29, 2015. She did receive the decision within ten days. The decision stated the claimant was eligible to receive unemployment insurance benefits and the federal employer could not be relieved of charges for benefits paid. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 10, 2015. The appeal was not filed until August 21, 2015, which is after the date noticed on the disqualification decision. The claimant did not file an appeal because she was eligible to receive benefits from this employer.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not clearly a disqualification. 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.

Iowa Admin. Code r. 871-24.26(23) 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:

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer she was leaving and quit work.

When an employee quits work because the type of work was misrepresented to her when she accepted the assignment, her leaving is with good cause attributable to the employer. The claimant left work because the qualifications, training, and hours were incorrectly stated to her. Her leaving was with good cause attributable to the employer. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The July 29, 2015, reference 06, decision is modified in favor of the appellant. The appeal in this case was timely. The claimant voluntarily quit with good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css