

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA J OVERHAKE
Claimant

APPEAL NO. 13O-UI-03999-MT

**ADMINISTRATIVE LAW JUDGE
AMENDEDEDECISION**

**NORTH AMERICAN HALAL FOODS
INDUSTRIES INC /HALAL FOODS**
Employer

**OC: 12/02/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 21, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 1, 2013 after remand order of the Employment Appeal Board. Claimant participated and was represented by Patrick O'Connell, Attorney at Law with witness Holly Riley. Employer participated by Jalel Aosse, Director and Trisha Semelroth, Human Resource Manager and represented by Dominic Pechota, Attorney at Law. Exhibits A, B and One through Five were admitted into evidence. At the remand hearing only additional Exhibits B and Five were admitted.

ISSUE:

The issue in this matter is whether claimant's appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 30, 2012. Claimant worked in quality control. Claimant quit December 3, 2012. Claimant quit because she was allegedly asked to falsify documents concerning food safety. Employer's representative Bill routinely told claimant to overlook paperwork that was not in order. Bill was not prohibited from engaging in management of this facility. Claimant made complaints to employer. Employer immediately took action upon receipt of the complaints. Employer remedied the problems swiftly. Several government agencies raided employer. Claimant was uncomfortable with working for this employer after the raids. No legal actions were ever filed against this company or personnel.

Claimant filed her appeal on January 2, 2013. Claimant received the decision on or about December 24, 2012. Claimant received a second decision December 28, 2012 that allowed benefits. The second decision was with an employer sibling company called Midamar Corp. Claimant believed that both of the companies were one in the same because she had been paid by both. Claimant changed companies without re applying. Claimant delayed calling Workforce

on December 31, 2012 because claimant wanted to see if she was getting paid because of the December 28 decision. Claimant looked online and discovered she was not getting paid. Claimant addressed her confusion with Workforce promptly on January 2, 2013. Workforce informed claimant that she must win all cases to maintain eligibility.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to any Agency error or misinformation pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was timely filed pursuant to Iowa Code section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

The December 28 decision misinformed claimant of her availability for benefits. A reasonable person would construe the December 28, 2012 decision as allowing benefits in light of the sibling company status. The appeal is timely.

DECISION:

The decision of the representative dated December 21, 2012, reference 01, is affirmed as to timeliness of appeal. Claimant's appeal is timely. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The Employment Appeal Board did not retain jurisdiction. Any aggrieved party must appeal as it is not automatically returned to the Employment Appeal Board for review.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css/css