

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER K GRONWOLD
Claimant

APPEAL NO: 10A-UI-00661-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

OC: 12/06/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's December 31, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the employer's account was exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on February 24, 2010. The claimant participated in the hearing. Lori Smith, the manager, appeared on the employer's behalf.

The parties waived notice so the issue of whether the claimant filed a timely appeal could be addressed even though it was not an issue noted on the hearing notice. Based on the evidence, the arguments of the parties, 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 benefits?

FINDINGS OF FACT:

The claimant started working for the employer in May 2003. The last 18 months of her employment, the claimant worked as a full-time line cook. Smith supervised her.

During her employment the claimant talked to Smith about the shift before her leaving her work area a mess, failing to complete work and not stocking the work area. Since these were part of the job duties and cleaning up after another person created more work for the claimant, she asked Smith to get this problem resolved. Smith talked to employees and the manager on duty before the claimant worked. Smith had started to resolve the problem but had not resolved the problems by December 4. The employer determined the manager on duty did not effectively manage employees and was the source of the problems the claimant reported.

On December 4, the claimant came to work and her work area was a total mess. Employees from the previous shift had not stocked the area and had not completed their work. The claimant was upset and concluded the employer had not done anything and would not do anything to resolve the problems she had reported. The claimant quit on December 4 by walking off the job about 30 minutes after she had started work that morning.

The next day, the claimant had calmed down and asked the employer if she could return to work. The employer told her no.

The claimant established a claim for benefits during the week of December 6, 2009. On December 31, 2009 a representative's decision was issued. This decision was mailed to the claimant and employer on January 4, 2010. The decision held the claimant was not qualified to receive unemployment insurance benefits as of December 6, 2009. The decision also informed the parties an appeal had to be filed or postmarked on or before January 10, 2010.

The claimant received the decision on January 6, 2010. The decision was postmarked January 4, 2010, not December 31, 2009. She went to her local Workforce office on January 11, to file an appeal. On January 11, the office was very busy so the claimant left and returned the next day. On January 12, 2010, the claimant filed her appeal.

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 section 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 was filed after the stated January 11, 2010 deadline for appealing expired. Since January 10, 2010 was a Sunday, the deadline was extended to January 11, 2010, if the decision had been mailed on December 31. Since the December 31, 2009, was not mailed until January 4, the deadline to appeal is extended to January 15, 2010. As a result of the decision being mailed on January 4 instead of December 31, the claimant filed a timely appeal on January 12, 2010. The Appeals Section has jurisdiction to address the merits of the claimant's 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 section 96.5-1. The claimant quit her employment on December 4, 2009. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code section 96.6-2.

The claimant quit for compelling reasons on December 4. She was upset that again the shift before her did not do their job and left a mess for her to clean up. The next day, after she had calmed down, the claimant attempted to rescind her resignation. This must be considered when deciding if the claimant quit because of intolerable working conditions. 871 IAC 24.26(4). The evidence does not establish that the claimant worked under intolerable working conditions. The claimant quit her employment for compelling reasons, but these reasons do not qualify her to

receive benefits. Therefore, as of December 6, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 31, 2009 decision (reference 01) is affirmed. The claimant filed a timely appeal. The Appeals Section has jurisdiction to address the merits of her appeal. The claimant voluntarily quit her employment on December 4, 2009, for compelling reasons, but these reasons do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 6, 2009. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs