

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERMINA DZEBIC
Claimant

APPEAL NO. 13A-UI-02767-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AFFINA LLC
Employer

OC: 01/13/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 13 2013, reference 03, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 8, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Rhonda Hall participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

The claimant worked full time as a customer service representative from August 22, 2012, to December 28, 2012. She voluntarily quit employment because the relatives she had taking care of her daughter were not available and daycare was too expensive. She decided that she needed to stay home with her daughter.

An unemployment insurance decision was mailed to the claimant's last-known address of record on February 13, 2013. The decision concluded she was not eligible for unemployment benefits because she voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by February 23, 2013.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on March 8, 2013, which is after the time period for appealing had expired. The claimant delayed in filing her appeal because she had also received a decision regarding her separation from employment with Tyson Fresh Meats that said she was eligible for benefits. She decided that meant she could receive unemployment insurance benefits from Tyson but not from the employer. When she did not receive benefits, she contacted the department and found out she needed to appeal the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

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 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 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed her appeal late because she thought she could still receive benefits from her employment with Tyson. She had a reasonable opportunity to file a timely appeal because the decision stated that she was disqualified generally.

The failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. Even if the appeal was deemed timely, the evidence does not show the employer caused her to quit. The rules specifically state that a quit due to lack of childcare is not for good cause. 871 IAC 24.25(17).

DECISION:

The unemployment insurance decision dated February 13 2013, reference 03, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs