

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FURAHA EVENGERINE
Claimant

APPEAL NO. 10A-UI-14402-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 04/25/10
Claimant: Appellant (2)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Furaha Evengerine (claimant) appealed an unemployment insurance decision dated May 20, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Swift & Company (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2010. The claimant participated in the hearing with Interpreter Josie Shaw, who speaks Swahili. Liliane Mugeni interpreted on behalf of the claimant and speaks Kurundi but understands Swahili. The employer participated through Jenny Mora, Employment Manager. The administrative law judge notes that the claimant was very difficult to understand during the hearing and this was true even with both interpreters. 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.

ISSUE:

The issue is whether the claimant's appeal is timely, and if so, whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on May 20, 2010. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 30, 2010. The appeal was not filed until October 20, 2010, which is after the date noticed on the disqualification decision.

The claimant was employed as a full-time production worker from December 9, 2008 through January 8, 2010. She went on maternity leave and was scheduled to return to work on March 29, 2010. After she was a no-call/no-show for three day, the employer considered that she had voluntarily quit her employment.

The employer said it would have had a Swahili interpreter when the claimant went through orientation. When the employer witness was questioned as to how the claimant would have known she was supposed to return to work, the employer did not know. The claimant testified she did not know when to return to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . 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.

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 did file an appeal immediately upon receiving information she had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant did not return from maternity because she did not know when she was supposed to return due to her difficulty with the English language. It is her burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The claimant has satisfied that burden and benefits are allowed.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated May 20, 2010, reference 01, is reversed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw