

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELICA J RUELAS NUNO**  
Claimant

**APPEAL NO. 11A-UI-13473-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS ENTERPRISES INC**  
Employer

**OC: 09/26/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 28, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on November 4, 2011. Claimant participated. Employer participated through production scheduler Mona Boylan and human resources business partner Courtney Willson and was represented by Tom Halpin of Talx. Department's Exhibit D-1 was admitted to the record.

**ISSUE:**

The issue is whether claimant's appeal was timely; claimant quit the employment without good cause attributable to the employer, or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant did not receive the reference 01 denial decision because her address had not been properly changed at IWD after her move in May 2011 from Serbick Drive to East 30th Street in South Sioux City, Nebraska. IWD had the new address but did not delete the old one so the notice was sent there. Claimant filed her appeal when she inquired about the new September 25, 2011 claim year monetary record.

Claimant was employed full-time as a temporary production worker from April 18, 2011 and was separated from employment on September 17, 2011. Her last day of work was September 10, 2011. No one told her she was fired. On August 24 she told the employer she intended to attend Northeast Community College in Nebraska and gave her notice of quitting effective August 31. On August 24 claimant was in Willson's office and they called Boylan in. She wanted to withdraw the resignation because she wanted to get unemployment while she was going to school. She declined to complete an exit interview form and the employer accepted the rescission of the resignation notice. Other temporary employees are still employed and work is available. On September 13 claimant called the human resources service center to find out

when she would be terminated so she could file for unemployment insurance benefits. On September 14 claimant called Boylan to ask when she was going to be terminated and said she had already spoken to the human resources department at the corporate office. Boylan asked who terminated her and she said no one had. Claimant knew she would be late on September 12 and knew her attendance was an issue so turned around and went home. She was scheduled at 4:14 a.m. and called at 3:33 a.m. to say she would not report that day. Boylan had told her in the past to talk to her supervisor directly and not leave a message if she was going to be absent or she would be considered no call-no show and as temporary employee, she would be considered to have quit. Claimant's job was in jeopardy because of attendance issues beginning August 31 when she called to report her absence. The employer has a no-fault attendance policy and does not necessarily record the reasons for the absence. She was absent on September 12, was a no call-no show on September 13, 16, and 17, and was scheduled off September 14 and 15. Claimant did not tell Willson about her daughter's illness on September 9 or request accommodation. According to the Kronos time keeping system, claimant worked on September 10 and was not scheduled on September 6 and 9. She filed an additional claim effective September 11, 2011.

#### **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 § 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 record does not indicate an address change was made with IWD when the claimant moved in May 2011. However, the ALJ will accept the claimant's argument that she did not have an opportunity to appeal the fact-finder's decision because the decision was not received after an address change error by IWD. 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 appealed the decision within four days of the decision appeal deadline when she questioned her new monetary record. Therefore, the appeal shall be accepted as timely.

The remaining issue is whether claimant quit the employment without good cause attributable to the employer or if she was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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 has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. An employer is

entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Inasmuch as the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are withheld.

**DECISION:**

The September 28, 2011 (reference 01) decision is affirmed. The claimant's appeal is timely. The claimant was not discharged but voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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