

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JENNIFER L SMITH
1233 PRAIRIE VIEW DR
UNIT 378
WEST DES MOINES IA 50266

QWEST CORPORATION
c/o EMPLOYERS UNITY INC
P O BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-05526-DWT
OC 03/07/04 R 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Jennifer L. Smith (claimant) appealed a representative's April 1, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Qwest Corporation (employer) would not be charged because the claimant had voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2004. The claimant participated in the hearing. Lucie Hengen, a representative with Employers Unity, Inc. (employer), appeared on the employer's behalf with Tracie Sargent, the call center manager, as a witness. 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 unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 16, 2002. The claimant's last day of work was September 20, 2003. The claimant then was on a medical leave of absence until January 31, 2004.

On December 8, 2003, the claimant's doctor released the claimant to work part-time. After the claimant received this work restriction, the employer told the claimant she would only be allowed to work part-time one week. The claimant did not go back to work part-time because she was afraid the employer would require her to work full-time the next week and she would not be able to do this.

The person the claimant had been working with during her leave of absence retired. Sargent then became the claimant's contact person. On January 27, Sargent sent the claimant a letter telling the claimant she needed to report to work by February 5 or personally contact Sargent that day or the employer could end her employment. The claimant tried to contact Sargent by February 5. The two did not personally talk to one another until February 6. On February 6, the claimant indicated she did not want to quit, but was unable to return to work yet. The claimant and Sargent talked about the possibility of the claimant taking a personal unpaid leave of absence. The two agreed to talk again the next week so Sargent could get the necessary paperwork for the claimant to complete. Sargent could not guarantee that the employer would grant the claimant a leave of absence. On February 12, Sargent successfully faxed the paperwork the claimant had to complete to a number the claimant gave her. The fax number was at the claimant's husband's workplace and she did not receive the faxed documents.

Sargent did not know if the employer would grant the claimant a personal unpaid leave of absence or not. Sargent also did not know what the employer would do if the leave of absence was not granted and the claimant did not return to work. The claimant's union representative told the claimant that if the employer discharged her she would lose some benefits that she would receive if she quit. The claimant did not know what her employment status was as of February 13. Instead of being in the dark about her employment and not knowing what was going to happen, the claimant decided to end this stressor in her life. She sent the employer an email on February 13 stating she was resigning for personal reasons.

The claimant established a claim for unemployment insurance benefits during the week of March 7, 2004. During the fact-finding interview a representative told the claimant she would be receiving two decisions. The claimant understood one decision she would receive related to whether or not she was medically able to work which was a formality and did not really mean anything because her doctor had to complete a form for the Department. The claimant also understood the first decision she would be receiving could be ignored but she needed to make sure she had her doctor complete a form by April 11. When the claimant received the reference 01 decision, she basically ignored the decision because the fact-finder told her to disregard it.

On April 11, 2004, the claimant contacted her local Workforce office and explained she had received two decisions, reference 01 and 02, but her doctor was not available to complete the necessary paperwork she needed to get to the fact-finder. The claimant understood her call would be noted and she would receive an extension to file the necessary paperwork. On April 20, the claimant faxed an appeal letter and the form the doctor completed to the fact-finder. The claimant incorrectly assumed this would take care of everything.

When the claimant did not receive any information she was eligible for benefits, she started making inquiries. She finally learned that no one in fact-finding acknowledged receiving her April 20 fax. The claimant finally filed an appeal to the Appeals Section on May 13, 2004.

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 §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 April 12, 2004 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 evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant's failure to file a timely appeal, however, was not due to information she received from Agency representatives. When the claimant participated in the fact-finding interview, she incorrectly assumed the first decision issued would relate to her ability to work. Since the fact-finder told her she did not have to do anything with that decision, she did not. Unfortunately the claimant made some incorrect assumptions because she did not understand the unemployment insurance system. The fact-finder was not incorrect with the information he gave the claimant because he was talking about the decision issued for reference 02. Since another decision would be issued after the fact-finder received the completed form from the doctor, the claimant's ability to work could be redetermined based on information from her doctor.

The claimant also received misinformation when she called her local Workforce Center during the week of April 11 and talked about both decisions. The representative should have at that time told the claimant to immediately file an appeal. If the claimant had mailed an appeal to the Appeals Section on April 12, her appeal would have been timely. Under 871 IAC 24.35(2), the claimant established a legal excuse for filing a late appeal. Therefore, 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 or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 96.5-2-a. On February 13, when the

claimant submitted her resignation, the employer had not made any decision concerning her continued employment. Instead, the employer was waiting for the claimant to complete some paperwork to see if the employer would grant her a personal unpaid leave of absence. In this case, the claimant initiated her employment separation by resigning. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The claimant concluded the employer was going to discharge her and she did not want to lose some of her benefits. Since the claimant's employment status was uncertain and she knew she would not lose certain benefits if she quit, the claimant decided to submit her resignation on February 13, 2004. The claimant established compelling personal reasons for quitting. For unemployment insurance purposes, her reasons do not qualify her to receive unemployment insurance benefits.

DECISION:

The claimant established a legal excuse for filing a late appeal from a representative's April 1, 2004 decision. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal. The representative's April 1, 2004 decision (reference 01) is affirmed. The claimant voluntarily quit her employment for personal reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of March 7, 2004. 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.

dlw/d