

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE J RUSH
Claimant

APPEAL NO. 10A-UI-00925-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GENERAL NOVELTY LTD
COACH HOUSE GIFTS**
Employer

**Original Claim: 11/29/09
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 6, 2010, reference 04, that held she voluntarily quit without good cause on January 9, 2009, and benefits are denied. A telephone hearing was held on February 25, 2010. The claimant participated. The employer did not participate in the hearing. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the claimant and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time, seasonal store clerk from November 8, 2008 to January 9, 2009. The claimant was working about four hours every two weeks. The claimant quit her job to enter an AARP Government Foundation training program that paid her a weekly stipend of \$130.50.

The claimant received the department decision mailed to her address of record on January 6, 2010. The warning date to file a timely appeal was January 16, a Saturday. The claimant delayed one day in filing her appeal due to Monday, January 18, being a State holiday. The claimant could have appealed on Tuesday, January 19, but did not do so due to work. The claimant submitted her appeal form to her local workforce center on January 20.

The employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the claimant failed to file a timely appeal, and the administrative law judge lacks jurisdiction to rule on the separation from employment issue.

While the claimant had a good cause to delay her appeal from January 16 through January 18, she could have mailed it on January 19 rather than waiting to turn it on January 20. Since there is no good cause for the appeal delay on January 19, the appeal is untimely.

DECISION:

The department decision dated January 6, 2010, reference 04, is affirmed. The claimant failed to file a timely appeal, and the denial decision that she quit without good cause on January 9, 2009, remains in force and effect. Benefits are denied until the claimant re-qualifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw