IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMBER M STREETS
Claimant

M & T INVESTMENTS INC
Employer

APPEAL NO. 11A-UI-00129-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/07/10
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 9, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. John Danneman, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

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 benefits?

FINDINGS OF FACT:

The claimant started working for the employer in July 2009. She worked full-time as the head cook at the employer's Anamosa restaurant. The Anamosa restaurant burned on November 1, 2010. After the Anamosa restaurant burned, Danneman started rebuilding it. The claimant understood she would return to work at the Anamosa restaurant in March 2011 or after the employer completed rebuilding the restaurant.

The employer did not want any employee to suffer a financial hardship because the restaurant burned. The employer offered all employees at the Anamosa restaurant continued employment by working at the employer's Happy Joe's restaurant in Monticello. The employer told employees he would pay them the same weekly wage they received at the Anamosa restaurant if they chose to work in Monticello, which was ten miles from Anamosa.

The claimant worked two days at the Monticello restaurant. She understood she would only be working 25 hours a week instead of the 32 hours a week she had been working. The claimant decided she could not work at the Monticello restaurant because her vehicle was not reliable for her to drive ten miles to Monticello, she had concerns driving in the winter, and she could not

receive state assistance for her day care costs if she did not work 32 hours a week. Instead of talking to the employer about the concerns she had with her vehicle and daycare costs, the claimant told the employer she would let other employees work her hours because she decided she would not work at the Monticello restaurant.

When the claimant chose not to work at the Monticello restaurant, the employer understood the claimant quit. The claimant, however, understood she was laid off until the employer opened up the restaurant in Anamosa again. The last day the claimant for worked the employer was November 10.

The claimant established a claim for benefits during the week of November 7, 2010. On December 9, 2010, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits as of November 7, 2010. The determination informed the parties that an appeal had to be filed or postmarked on or before December 19, 2010.

The claimant received the representative's determination on December 11, 2010. She went to the Cedar Rapids Workforce office on December 13 to file her appeal. She completed the necessary paperwork and understood her local representative would send her appeal to the Appeals Sections.

When the claimant did not receive a hearing notice by January 3, 2011, she went back to her local Workforce office and learned the Appeals Section did not have a record of her December 13 appeal. The claimant filed her second appeal on January 3, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. 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 determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 filed her appeal before the December 20 deadline. (Since December 19 was a Sunday, the deadline to appeal was automatically extended to Monday, December 20, 2010.) The claimant established that she filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of her appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(91). When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2). The law presumes a claimant voluntarily quits without good cause when she leaves because of transportation problems or childcare issues. 871 IAC 24.25(1), (17).

Even though the claimant may not have had reliable transportation to drive ten miles to Monticello, other employees lived in Anamosa who the claimant could have ridden to work with.

The claimant did not talk to the owner about her transportation or child care issues. If the claimant had talked to him, he could have scheduled the claimant so she could have ridden with another employee.

The claimant's child care issues occurred because the claimant understood she would only be working 25 hours instead of the 32 hours she had been working. Again, the claimant did not say anything to the employer about this problem. Since the employer wanted to make sure employees from the Anamosa restaurant did not suffer any financial hardship, he was willing and planned to have them work as many hours in Monticello as they had in Anamosa. Also, the claimant would have received the same weekly pay as she earned while working at the Anamosa restaurant.

The claimant could have continued to work for the employer. The claimant quit for unemployment insurance purposes when she decided she would not work at the Monticello restaurant. She quit because of transportation and childcare issues. These reasons establish personal reasons for quitting. Her failure to talk to the employer about these two concerns to see if the employer would make any more accommodations for her demonstrate that she became unemployed as of November 10, 2010, for reasons that do not qualify her to receive benefits.

DECISION:

The representative's December 9, 2010 determination (reference 01) is affirmed. The claimant filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of her appeal. The claimant voluntarily quit working at the employer's Monticello restaurant for personal reasons that do not qualify her to receive benefits. As of November 7, 2010, the claimant is disqualified from receiving unemployment insurance benefits. 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.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw