

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

AMANDA A WILLIAMS  
2090 KEOKUK ST LOT #51  
HAMILTON IL 62341

KEOKUK AREA GROUP HOME INC  
317 HIGH ST  
KEOKUK IA 52632

Appeal Number: 05A-UI-01858-RT  
OC: 09-05-04 R: 04  
Claimant: Respondent (5)

**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, 4<sup>th</sup> 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 is 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 96.6-2 – Initial Determination (Timeliness of Protest)  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Keokuk Area Group Home, Inc., filed a timely appeal from an unemployment insurance decision dated February 17, 2005, reference 05, allowing unemployment insurance benefits to the claimant, Amanda A. Williams, because the employer's protest was not timely. After due notice was issued, a telephone hearing was held on March 9, 2005 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Amy Rosson, Former Director; Thomas Jenkins, Current

Administrator; and Thomas Richardson, President of the Board of Directors, participated in the hearing for the employer. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

Although not set out on the notice of appeal, other issues were raised at the hearing including whether the claimant was disqualified to receive unemployment insurance benefits either because she left work voluntarily without good cause attributable to the employer or because she was discharged for disqualifying misconduct and whether the claimant was overpaid unemployment insurance benefits. The employer permitted the administrative law judge to take evidence on those issues and decide those issues, if necessary and waived further notice of those issues. The claimant did not participate in the hearing. Nevertheless, the administrative law judge went ahead and took evidence on those issues and will decide those issues because following the separation from the employer herein, the claimant has requalified to receive unemployment insurance benefits and the decision herein would not affect her receipt of benefits or her overpayment.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective September 5, 2004. A notice of the claimant's claim was sent to the employer on September 13, 2004 but never received by the employer. The notice of claim indicated that a protest was due by September 23, 2004. However, the employer filed no protest because it did not receive a notice of claim. The first the employer learned of the claimant's benefits was when it received its fourth quarter statement of charges, which was sent on February 8 or 9, 2005. The employer received the fourth quarter statement of charges on February 14, 2005 and immediately e-mailed Iowa Workforce Development essentially appealing the quarterly statement of charges as shown at the second page of Department Exhibit One. The notice of claim appears at the first page of Department Exhibit One.

Because the administrative law judge hereinafter concludes that the employer's protest was late but that the employer has demonstrated good cause for the delay in the filing of its protest, the administrative law judge further finds: The claimant was employed by the employer as a full-time program aide for four years until she voluntarily quit effective June 7, 2004. Approximately two weeks prior to that time the claimant gave the employer a two-week notice of her resignation to be effective June 7, 2004. The claimant left on good terms. The claimant did not say why she was resigning in the resignation. None of the employer's witnesses knew why the claimant had quit or whether she had a job at the time she quit. Work remained available for the claimant had she not quit. The claimant never expressed any concerns about her working conditions to the employer's witness, Amy Rosson, Former Director, nor did she do so to anyone else that Ms. Rosson heard about. The claimant also never indicated or announced an intention to quit to Ms. Rosson if problems she was having at work were not addressed by the employer nor did the claimant do so to anyone else that Ms. Rosson heard about. Pursuant to her claim for unemployment insurance benefits filed effective September 5, 2004, the claimant has received unemployment insurance benefits in the amount of \$2,731.00 as follows: \$141.00 for benefit week ending September 11, 2004 and \$185.00 for 16 weeks from benefit week ending September 18, 2004 to benefit week ending January 1, 2005. Of that amount, \$370.00 was offset against an overpayment during the time that she received benefits leaving total benefits received in the amount of \$2,731.00. The claimant remains overpaid \$188.00.

The claimant earned \$3,737.70 in the third quarter of 2004 and \$1,071.00 in the second quarter of 2004 from Access Direct Telemarketing following her separation from the employer herein.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer established good cause for such failure. The employer's protest is not timely but the employer has demonstrated good cause for the delay in the filing of its protest and such protest should be accepted and the administrative law judge has jurisdiction to reach the remaining issues.
2. Whether the claimant's separation from employment was a disqualifying event. It was, but since separating from the employer herein the claimant has requalified to receive unemployment insurance benefits and is therefore not disqualified to receive unemployment insurance benefits but any benefits to which the claimant is entitled shall not be charged to the account of the employer herein.
3. Whether the claimant is overpaid unemployment insurance benefits. As a result of this separation, the claimant is not overpaid any unemployment insurance benefits but records indicate that the claimant is presently overpaid \$188.00 for benefits received in 2004.

Iowa Code section 96.6-2 provides in pertinent part:

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.

Iowa Code section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.
  - a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

871 IAC 24.35(2) provides:

- (2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the

division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had good cause for the delay in the filing of its protest. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that although its protest was not timely, the employer had good cause for the delay in the filing of its protest. The employer's witness, Amy Rosson, Former Director, credibly testified that the employer never received a notice of claim sent to the employer on September 13, 2004 and, therefore, did not protest it in a timely fashion. That notice did indicate that a protest was due September 23, 2004 but the employer had no opportunity to protest since it did not receive the notice. The employer first learned about the claimant's benefits when it received the quarterly statement of charges for the fourth quarter of 2004. This was mailed out on February 8 or 9, 2005 and received by the employer on February 14, 2005. The employer immediately faxed a letter inquiring about the claimant's benefits, which letter was really treated as an appeal of the quarterly statement of charges. The employer sent this e-mail on February 16, 2005. Both the e-mail and the notice are shown at Department Exhibit One. Since the employer never received the notice, the employer did timely appeal the quarterly statement of charges within the 30-day period for doing so. The delay or failure to file a protest was due to delay or other action of the U.S. Postal Service. The administrative law judge concludes that although the employer's protest was not timely, it has demonstrated good cause for the delay in the filing of its protest and has further timely appealed the quarterly statement of charges. Accordingly, the administrative law judge concludes that although the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, the employer did demonstrate good cause for such a delay and, as a consequence, the administrative law judge concludes that the protest should be accepted as well as the appeal of the quarterly statement of charges and that he has jurisdiction to reach the remaining issues.

Iowa Code section 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.

Ms. Rosson credibly testified, and the administrative law judge concludes, that the claimant left her employment voluntarily effective June 7, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable to the employer for her quit. The employer's witnesses all credibly testified that they did not know why the claimant quit. Iowa Workforce Development records indicate that the claimant had subsequent employment but there is no evidence as to whether the claimant had that subsequent employment at the time she left her employment with the employer herein. There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about her working conditions or indicated or announced an intention to quit if any of her concerns were not addressed by the employer. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and this separation would be potentially disqualifying. However, the administrative law judge notes that since leaving the employer herein the claimant has clearly requalified to receive unemployment insurance benefits by earning in excess of ten times her weekly benefit amount of \$185.00 or \$1,850.00. In the third quarter of 2004, the claimant earned \$3,737.70 from Access Direct Telemarketing and from the same employer earned \$1,071.00 in the second quarter of 2004. This has clearly requalified the claimant to receive unemployment insurance benefits. Therefore, the administrative law judge concludes that the claimant is not disqualified to receive unemployment insurance benefits but any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible but any unemployment insurance benefits to which she is entitled shall not be charged to the account of the employer herein.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,731.00 since separating from the employer herein on or about June 7, 2004 and filing for such benefits effective September 5, 2004. Workforce Development records indicate that the claimant is presently overpaid unemployment insurance

benefits in the amount of \$188.00 for this period. Otherwise, the administrative law judge concludes that the claimant is not overpaid any unemployment insurance benefits because she has requalified to receive such benefits following the potentially disqualifying separation from the employer herein.

DECISION:

The representative's decision of February 17, 2005, reference 05, is modified. The claimant, Amanda A. Williams, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because although her separation from the employer herein was disqualifying, the claimant has requalified to receive unemployment insurance benefits following the potentially disqualifying separation from the employer herein on June 7, 2004. Any unemployment insurance benefits to which the claimant has received or is entitled shall not be charged to the account of the employer herein. The claimant is overpaid unemployment insurance benefits in the amount of \$188.00 per Iowa Workforce Development records. Although the employer's protest is not timely, the employer has demonstrated good cause for the delay in the filing of its protest and the protest is, therefore, accepted.

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