

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

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WASCO CA 93280

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Appeal Number: 06A-UI-00809-SWT  
OC: 11/20/05 R: 12  
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, 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 Quit  
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 23, 2005, reference 02, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 9, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha. Julie Millard participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a production worker from February 14, 2005 to October 3, 2005. The claimant voluntarily quit employment to relocate to California because

her 17-year-old son was having difficulty adjusting to living in Iowa away from family and she was concerned that he was going to get into trouble.

An unemployment insurance decision was mailed to the claimant's last known address of record on December 23, 2005. The decision concluded she voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by January 2, 2006.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on January 18, 2006, which is after the time period for appealing had expired. The claimant delayed in filing her appeal because she has difficulty understanding the English language and when she called the Agency initially she was not given advice to appeal. Later, when she asked why she was no longer getting checks, she was told to appeal the disqualification. She immediately filed the appeal.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal. Iowa Code section 96.6-2 requires parties to appeal decisions within ten calendar days after notification was mailed to the claimant's last known address.

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 deadline for appealing expired. The failure to file a timely appeal, however, was due to Agency misinformation, which under 871 IAC 24.35(2) excuses the delay in filing an appeal.

The next issue is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

871 IAC 24.25(2) 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 section 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 section 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:

(2) The claimant moved to a different locality.

Generally, the law requires that the reasons for quitting be caused by the employment. In this case, the claimant left work for an understandable reason, but not for good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated December 23, 2005, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/kjf