

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M JEFFERSON
Claimant

APPEAL NO: 07A-UI-02460-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**APAC CUSTOMER SERVICES OF
IOWA LLC**
Employer

**OC: 09/24/06 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 26, 2007, reference 05, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was scheduled for March 27, 2007. Proper notice of the hearing was given to the parties. The claimant was unavailable to take the call at the time of the hearing. She called after the hearing and represented that she intended to be home to take the call at the time of the hearing. She said she was attending a class in the morning, her car would not start after the class was over, and she did not arrive home until after the hearing that concluded. The hearing was reopened for good cause based on the claimant's representations. The hearing was rescheduled in consultation with the parties for April 4, 2007, and the parties received proper notice of the hearing. The claimant was not available to take the call at the time of the hearing and did not call in while the hearing was in progress or afterward. Heather Woodward and Sue Lester participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest of the claim?
Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from January 9, 2006, to March 2, 2006. She was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. Under the employer's policy, an employee was considered to have terminated employment after three days of absence without notice to the employer. The claimant had received a written warning regarding her excessive absenteeism.

The claimant was absent from work on March 3, March 4, and March 6, 2006. The claimant failed to notify the employer regarding her absences. The claimant never contacted the employer afterward and voluntarily left employment for unknown reasons.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 24, 2006. Her weekly benefit amount was determined to be \$120.00. She filed for and received \$2,518.30 in benefits for the weeks between September 24, 2006, and March 3, 2007. Her wage records do not show that she earned at least \$1,200.00 in wages after her employment with the employer ended.

A notice of claim was mailed to the employer's address of record on September 29, 2006, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of October 10, 2006. The employer's protest was mailed on October 10, 2006. For unknown reasons, the protest was never received by the Agency. The employer responded immediately after the quarterly statement of benefit charges was issued on February 19, 2007, informing the employer that its account had been charged for benefits paid in the fourth quarter of 2006.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

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.

The employer filed a timely protest within the time period prescribed by Iowa Code section 96.6-2. The failure of the Agency to receive the protest was due to an Agency error or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuse the delay in filing the protest. The protest is deemed timely.

The next issue in this case 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.

Under the unemployment insurance rules, a claimant is presumed to have quit employment without good cause attributable to the employer after three days of absence without notice to the employer in violation of a work rule. 871 IAC 24.25(4). Even without the rule, the claimant would be considered to have voluntarily quit employment without good cause attributable to the employer because she simply stopped reporting to work and never had any further contact with the employer.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$2,518.30 in benefits for the weeks between September 24, 2006, and March 3, 2007.

DECISION:

The unemployment insurance decision dated February 26, 2007, reference 05, is reversed. The employer's protest is deemed timely. 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. The claimant was overpaid \$2,518.30 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs