

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY J SAMS
Claimant

APPEAL NO: 13A-UI-08052-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 05/26/13
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 June 20, 2013 determination (reference 01) that disqualified her from receiving benefits as of May because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Amy MacGregor 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 as of May 26, 2013.

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, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 16, 2013. On May 14, 2013, the employer talked to the claimant about her attendance. The May 14 verbal discussion was not formal warning. The employer's attendance policy informs probationary employees that after they receive a formal warning subsequent absence would result in termination. The claimant's last day of work was May 14, 2013.

On days the claimant was scheduled to work, she called in sick May 15 through 31. She called before anyone was at work and left messages. The claimant's supervisor tried to contact her in an attempt to get paperwork from the claimant so the employer could grant her a leave of absence. The claimant did not respond to the employer's messages.

After May 31, the claimant was scheduled to work, but she did not call or report to work. When the claimant did not call or report for three consecutive days, June 3, 4 and 5, the employer considered her to have quit by abandoning her employment. The claimant assumed the employer discharged her for calling in sick from May 15 through 31.

The claimant established a claim for benefits during the week of May 26, 2013. A June 20 determination was mailed to the claimant and employer. This determination held the claimant disqualified from receiving benefits. The determination informed the parties that this was the final decision unless an appeal was filed or postmarked on or before June 30, 2013.

The claimant does not know when she received the June 20 determination. She filed an appeal on July 3, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the July 1, 2013 deadline for appealing expired. Since June 30 was a Sunday, the deadline to appeal was automatically extended to Monday, July 1.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The claimant did not establish a legal excuse for filing a timely appeal. The Appeals Section does not have any legal authority to make a decision on the merits of the appeal.

In the alternative, if the claimant had established a legal excuse for filing a late appeal, the claimant would still be disqualified from receiving benefits as of May 26, 2013, because she voluntarily quit her employment without good cause.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The claimant incorrectly assumed the employer had discharged her when she called in sick May 15 through 31. The employer did not end her employment until the claimant failed to call or report to work after May 31. The claimant effectively abandoned her employment and quit. She quit for personal reasons, but did not establish good cause attributable to the employer. As of June 2, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's June 20, 2013 (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. This means the claimant remains disqualified from receiving benefits as of June 2, 2013, and the employer's account will not be charged. The claimant's disqualification continues until she earns ten times her weekly benefit amount.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css