

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KERRI A ORONA
Claimant

APPEAL NO. 07A-UI-08560-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SALEM MANAGEMENT INC
Employer

OC: 01/07/07 R: 01
Claimant: Respondent (2)

Section 96.5(1) – Voluntary Quit
Section 96.6(2) - Timeliness of Protests

STATEMENT OF THE CASE:

Salem Management, Inc. (Salem) filed an appeal from a representative's decision dated August 28, 2007, reference 05, which held that the protest to Kerri Orona's claim was not filed timely. After due notice was issued, a hearing was held by telephone on September 24, 2007. Ms. Orona participated personally. The employer participated by Cyd Hall, Office Manager. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

The primary issue is whether the employer timely protested Ms. Orona's entitlement to benefits. A secondary issue is whether Ms. Orona was separated from employment on March 13, 2007 for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Orona filed a claim for job insurance benefits effective January 7, 2007. Notice of the claim was mailed to Salem at its address of record on January 10. The employer did not protest her entitlement at that point because her separation from the last assignment was not considered a disqualifying event. Ms. Orona subsequently returned to work for Salem on February 4, 2007, on a new temporary assignment. She worked until March 13, when she stopped reporting for available work. She had not been notified that the assignment was over. Continued work on the assignment would have been available if Ms. Orona had continued reporting. She quit the assignment because she was missing time due to a sick child. She did not file an additional claim for job insurance benefits after the March 13 separation.

A first quarter statement of charges was mailed to Salem on May 9, 2007 and reflected benefits paid to Ms. Orona and charged to the employer's account. On May 25, the employer mailed a notice of separation (Form 60-0154) to Workforce Development indicating that Ms. Orona had been discharged for misconduct on March 13, 2007.

REASONING AND CONCLUSIONS OF LAW:

Salem was initially notified of Ms. Orona's claim in January of 2007. Since the employer did not believe there was a basis on which to protest her entitlement, no protest was filed. The employer should not be penalized for not filing a protest within ten days of January 10, 2007 when there was no basis for protest.

at the time. Ms. Orona returned to Salem for an additional assignment on February 4, after the ten-day protest period had expired. She became separated again on March 13 but did not file an additional claim or reopen her old claim.

When an employer utilizes agency Form 60-0154, the form has to be submitted to Workforce Development within ten days of when the employer was mailed an initial notice of claim. If a claim for benefits has not been filed, the form may be submitted at any time. See 871 IAC 24.8(2)d. The above rule does not account for those situations where an individual has subsequent employment with the same employer after the protest period has expired. Ms. Orona did not file an additional claim after her March 13 separation. Therefore, no notice of an additional claim would have been sent to the employer after the March 13 separation. Since there was no additional claim, the employer had no opportunity to protest based on her latest separation. With respect to Ms. Orona's last period of employment, the administrative law judge concludes that no claim had been filed. Therefore, the employer was not limited to ten days in which to submit Form 60-0154. For the above reasons, the administrative law judge concludes that there is jurisdiction over the March 13, 2007 separation based on the employer's May 25, 2007 submission of the notice of separation, Form 60-0154.

Ms. Orona quit her employment with Salem when she stopped reporting for her assignment. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The term "good cause attributable to the employer" generally refers to some matter over which the employer has control. Ms. Orona quit because of the illness of her child. This was not a matter within the control of Salem.

An individual who leaves employment because of serious family needs or responsibilities is presumed to have quit for no good cause attributable to the employer. See 871 IAC 24.25(23). Inasmuch as there was no other reason for the separation, it is a disqualifying event. As such, Ms. Orona is denied benefits effective the Sunday of the week in which she stopped reporting for work, March 11, 2007. Because she has not claimed benefits since the week ending February 10, 2007, she has not been overpaid job insurance benefits. To the extent that the employer's quarterly charge statements are for benefits paid to Ms. Orona through February 10, 2007, the statements are correct.

DECISION:

The representative's decision dated August 28, 2007, reference 05, is hereby reversed. Salem filed a timely protest to Ms. Orona's entitlement to benefits after March 13, 2007. She voluntarily quit the employment on March 13, 2007 for no good cause attributable to the employer. Benefits are withheld effective March 11, 2007 and until such time as Ms. Orona has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw