

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY A DEMORUELLE**  
Claimant

**APPEAL NO. 07A-UI-06800-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**USA STAFFING INC**  
Employer

**OC: 02/04/07 R: 02  
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.6-2 – Timely Protest  
Section 96.7-2-a – Appeal from Statement of Charges  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

USA Staffing, Inc. filed a timely appeal from an unemployment insurance decision dated June 12, 2007, reference 05, that allowed benefits to Kimberly A. Demoruelle upon a finding that the employer's protest had not been filed on a timely basis. After due notice was issued, a telephone hearing was held July 24, 2007. Ms. Demoruelle did not respond to the hearing notice. Assistant Branch Manager Cristin Adams participated for the employer. The administrative law judge takes official notice of agency benefit payment and wage records.

**ISSUES:**

Did the employer file a timely protest? Did the employer file a timely appeal from a Statement of Charges? Did the claimant leave work with good cause attributable to the employer? Has the claimant been overpaid?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Kimberly A. Demoruelle filed a claim for unemployment insurance benefits effective February 4, 2007. Although a Notice of Claim was mailed by the agency to USA Staffing, Inc., a base period employer, the employer did not receive the notice. It filed a timely appeal from the Statement of Charges for the first quarter of 2007.

Kimberly A. Demoruelle worked for USA Staffing from May until August 2006. She left supposedly to accept permanent employment with Dee Zee, Inc. The agency has no record, however, of wages being paid to Ms. Demoruelle by Dee Zee or by any other employer after she worked for USA Staffing.

Ms. Demoruelle has received unemployment insurance benefits during her present benefit year.

## **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the administrative law judge has jurisdiction to rule on the separation issue. In order to have jurisdiction, the administrative law judge must find either that the employer filed a timely protest when Ms. Demoruelle initially filed her claim for unemployment insurance benefits or, in the alternative, if the employer did not receive the Notice of Claim, that it filed a timely appeal from the Statement of Charges. See Iowa Code section 96.6-2 and 96.7-2. The evidence persuades the administrative law judge that the employer did not receive the Notice of Claim. The evidence also establishes that the employer filed a timely appeal from the Statement of Charges. Thus, the administrative law judge has jurisdiction to rule on the separation issue.

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.

An individual is not disqualified for benefits if the individual has left employment for the sole purpose of accepting other employment, provided the individual actually performed services for that employer. See Iowa Code section 96.5-1-a. If an individual resigns in order to seek other employment but is unsuccessful in doing so, benefits must be withheld. See 871 IAC 24.25(3). It is unfortunate that the claimant did not participate in the hearing. There is no explanation in the record for the lack of any wages paid to this claimant after her separation from employment with USA Staffing, Inc. Under these circumstances benefits must be withheld.

Ms. Demoruelle has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

## **DECISION:**

The unemployment insurance decision dated June 12, 2007, reference 05, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefits amount, provided she is otherwise eligible. She has been overpaid by \$1,019.67.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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