

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA J CORSBIE
Claimant

JANEPETRA CORP
14TH ST INN
Employer

APPEAL NO: 12A-UI-02535-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/22/12
Claimant: Appellant (2-R)

Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay
Section 96.5-1 – Voluntary Quit
871 IAC 24.26(4) – Detrimental Working Conditions
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 29, 2012, reference 01, that held she voluntarily quit without good cause on January 20, 2012, and benefits are denied. A telephone hearing was held on March 29, 2012. The claimant, and former-manager witness, Teena Carney, participated. Kim Young, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the appeal is timely.

Whether claimant voluntarily quit with good cause attributable to the employer.

Whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony, and having considered the evidence in the record, finds: The claimant received the decision mailed to her address of record on February 29, 2012 with an appeal deadline date of March 10. She went to her local workforce and submitted an appeal form on March 5 with an understanding it would forward the appeal for processing. When she learned it had not been received, she re-submitted her appeal that was received by the Appeals section on March 13.

Claimant began working as a part-time front desk clerk at an employer motel (Baymount Inn & Suites) about June 15, 2011 at \$8 an hour. Prior to accepting the job, she was awarded social security disability benefits in April. The award limits her to personal earnings not to exceed \$900 a month.

Claimant agreed to accept additional duties for sales and marketing in August. She worked about 20 hours a week. Her final pay rate was \$9.50 an hour. When the employer learned she was doing some work at home, he told her no, and she would not be paid for it. Claimant was paid for all hours worked based on time clock entries.

Claimant had some issues with coldness and heat issues at the workplace. Her witness corroborated this was a problem. The lobby would be as cool as 55 degrees in the winter and as high as 95 degrees in the summer. Space heaters were used to keep the lobby warm. The former manager witness verified there is a thermometer in the lobby that showed the temperature as low as 55 and as high as 90. The employer acknowledged there were some heating/cooling issues.

Although claimant complained about lifting boxes, the employer knew about the restriction and directed her not to do so. Claimant was not advised to quit her job by her doctor.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes that claimant filed a timely appeal. She submitted an appeal on March 5, and re-submitted it on March 13 due to department error. The claimant has established a good cause for the appeal delay.

Iowa Code § 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 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The administrative law judge further concludes claimant voluntarily quit with good cause on January 20, 2012 due to detrimental working conditions.

The use of space heaters in a motel lobby to keep it warm enough for employees to work is a detrimental working condition. Any day where it is at or near 55 degrees is unacceptable. This supports other testimony that it got more than 90 degrees at times in the summer. While claimant offered other reasons for quitting this is the only one considered as a good cause for doing so.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the issue whether claimant is able and available for work is remanded to claims for a department fact-finding.

The claimant's employment is limited by a social security disability award. She is limited to \$900 earnings a month that is consistent with working only part-time employment. She also has serious health limitation restrictions that are the basis for the social security disability.

DECISION:

The department decision dated February 29, 2012, reference 01, is reversed. The claimant filed a timely appeal. Claimant voluntarily quit with good cause on January 20, 2012. The issue whether claimant is able and available for work is remanded to claims. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs