

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET J NEWTON
Claimant

APPEAL NO: 13A-UI-10346-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALORICA
Employer

OC: 07/14/13
Claimant: Appellant (1)

Iowa Code § 96.6(3) – Previously Adjudicated
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 20, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment on August 18, 2012, for reasons that do not qualify her to receive benefits. Hearing notices were mailed to the parties on September 16, 2013.

The claimant participated in the October 4 hearing with her attorney, John Beauvais. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of July 14, 2013.

ISSUES:

Did the claimant file a timely appeal or establish legal excuse for filing a late appeal?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of July 15, 2012. At her former job the claimant earned \$18 an hour.

On July 24, 2012, the claimant accepted a job with the employer as a customer service representative to work 35 hours a week. The employer paid her \$9 an hour. The claimant was to be in training for nine weeks. After the claimant was in training for a week, she received information from two Workforce representatives (Claimant Exhibit A) that the job she had accepted would not be considered suitable for her because she had been earning \$18 and this job only paid her \$9 an hour. After the claimant was in training for four weeks, she resigned as of August 18, 2012, because she would be required to work noon to 8 p.m. The claimant has a young son and did not have anyone to take care of him when she was working at night.

After the claimant quit, she contacted the Department. The claimant was told that because she quit a temporary, part-time job there were no adverse consequences to her for quitting and she would continue receiving benefits. The employer is a base period employer under the claimant's July 14, 2013 claim year.

When the claimant established a new benefit year, the employer received a notice of claim and a fact-finding interview was scheduled. After a fact-finding was completed, a claims specialist issued August 19, 2013 and August 20 determinations (reference 08 and 01) that disqualified the claimant from receiving benefits as of August 19, 2012 and July 14, 2013, because she had quit for reasons that did not qualify her to receive benefits. The August 20 determination informed the parties an appeal had to be filed or postmarked on or before August 30, 2013.

The claimant received the August 20 determination before August 30. She understood she would not be qualified to receive benefits as of July 14, 2013, when she established a new benefit year. After the claimant received an August 28, 2013 overpayment determination, she then went to her attorney on September 6. An appeal was filed on the claimant's behalf on September 9, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination 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 August 30, 2013 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant's failure to file a timely appeal was not due to any Agency error or recent 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. Even though the claimant received incorrect information in August 2012, she learned in August 2013 that she would not be held qualified to receive benefits based on her reasons for quitting in mid-August 2012. The claimant incorrectly assumed she would only be held ineligible to receive benefits as of July 14, 2013. The claimant did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the August 20, 2013 determination cannot be changed, and the claimant remains disqualified from receiving benefits as of August 19, 2012.

In the alternative, assume the claimant has a legal excuse for filing a late appeal. Since the August 19 and 20, 2013 determination addresses the same employment separation, the decision for appeal 13A-UI-10344-DWT does not change unless the claimant has requalifying wages or has earned ten times her weekly benefit amount since August 19, 2012.

On the claim year the claimant established during the week of July 14, 2013, the employer is a base period employer.

DECISION:

The representative's August 20, 2013 determination (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 determination that the claimant voluntarily quit her employment on August 18, 2012 for reasons that do not qualify her to receive benefits cannot be changed. As of July 14, 2013, the claimant is not qualified to receive benefits. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs