

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE B KIRKPATRICK
Claimant

APPEAL NO. 12A-UI-02234-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTUANT ELECTRICAL INC
Employer

OC: 04/19/09
Claimant: Appellant (2)

Section 96.5-1 – Quit
Section 96.6-2-a – Timeliness of Appeal

STATEMENT OF THE CASE:

Michelle Kirkpatrick filed an appeal from a decision dated March 29, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held in Creston, Iowa, on June 19, 2012. The claimant participated on her behalf. The employer, Actuant Electrical, participated by Human Resources Manager Sandy Welch. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the claimant's appeal is timely and whether she quit with good cause attributable to the employer.

FINDINGS OF FACT:

Michelle Kirkpatrick was disqualified from receiving unemployment benefits in a decision issued March 29, 2010, reference 01. The claimant did not receive the decision, even though it was mailed to the correct and current address of record at that time. She was unaware she had been disqualified until she received an overpayment decision in March of 2012.

Ms. Kirkpatrick was employed by Actuant from February 2004 until January 29, 2010, as a full-time production worker. She was laid off by the employer for lack of work the week ending April 25, 2009. She drew unemployment benefits through the week ending January 30, 2010. On January 29, 2010, the global human resources leader, Denise Williams, contacted her by phone for a recall to work with Actuant. The claimant had already been offered, and accepted, a job with Bunn to begin on February 1, 2010. She declined the offer to return to work because the new employer would pay her a higher wage.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 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.

The claimant maintained she did not receive the original decision mailed March 29, 2010, reference 01. There is no evidence to the contrary and she did file the appeal from the overpayment decision promptly. This appeal should be accepted as timely.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant quit her employment with Actuant when she was contacted for recall because she had been offered, and accepted, a better-paying job with another company to begin three days later. Under the provisions of the above Code section, this is good cause for quitting and disqualification may not be imposed.

DECISION:

The representative's decision of March 29, 2010, reference 01, is reversed. The appeal shall be accepted as timely. The claimant is qualified for benefits, provided she is otherwise eligible. The account of Actuant will not be charged with any benefits paid to the claimant after the week ending January 30, 2010.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw