

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA A TREYBAL
Claimant

APPEAL NO. 10A-UI-16164-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPENCER MUNICIPAL HOSPITAL
Employer

OC: 09/29/10
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 29, 2010, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A hearing was held on January 26, 2011, in Spencer, Iowa. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Michael Schauer participated in the hearing on behalf of the employer with a witness, Marcia Taylor. Exhibits A-1 and 1 through 3 were admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?
Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full time for the employer as an admitting clerk from December 29, 2008, to August 27, 2010.

On August 16, 2010, the claimant submitted a written resignation by email to her supervisor stating that her last day of work would be August 27, 2010. The claimant quit to enter self-employment as she intended to start up a cleaning business.

On August 17, the claimant contacted her supervisor and asked to rescind her resignation because she decided she had acted hastily. The employer had already accepted her resignation and decided not to allow her to rescind it. The claimant worked through her notice period.

An unemployment insurance decision was mailed to the claimant's last-known address of record on September 29, 2010. The decision disqualified the claimant and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 9, 2010, or the next business day if the deadline fell on Saturday, Sunday, or legal holiday. October 9 was a Saturday and the next business day following October 9 was October 11, 2010, since October 10 was a holiday.

The claimant received the decision on October 1, 2010, within the ten-day period for appealing the decision. On November 23, the claimant reported to her local Workforce Development Center inquiring about the status of her appeal. She brought in a copy letter of appeal dated "10/11/10" and asserted that she had mailed it on that date. She completed an appeal form and filed it along with the letter on November 23.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). The problem in this case is that the claimant did not participate in the hearing and the only evidence of what happened is what she wrote in her appeal. I do not believe a finding can be made that she properly mailed the appeal letter by the deadline without credible testimony. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

In the alternative for the purpose of efficiently disposing of this case, I will issue a ruling as to whether the claimant is qualified for benefits based on her separation from employment. The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant quit to enter self-employment as she intended to start up a cleaning business. The rules state that a claimant who quits to enter self-employment (as opposed to leaving for employment by other employer) is considered to have voluntarily quit employment without good cause attributable to the employer. 871 IAC 24.28(5). Once a claimant resigns and the employer accepts the resignation, the separation must be treated as a voluntarily quit. An employer has no obligation to allow an employee to rescind a resignation once given. As a result, the claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated September 29, 2010, reference 01, is affirmed. The claimant's appeal was untimely. She voluntarily quit employment without good cause attributable to the employer. She is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css