

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA L RODDICK
Claimant

APPEAL NO. 08A-UI-10503-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUTTENBERG INDUSTRIES INC
Employer

**OC: 09/28/08 R: 04
Claimant: Appellant (4)**

Section 96.5-1-c – Voluntary Leave to Care for Injured Family Member
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Teresa L. Roddick (claimant) appealed a representative's October 20, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Guttenberg Industries, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 24, 2008. The claimant participated in the hearing. Tom Ertl, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 15, 2008. The employer hired the claimant to work as a full-time machine operator.

The claimant's son was involved in an ATV accident. The claimant contacted the employer on September 26 to report she was unable to work because her son was hospitalized. On September 29, the claimant called the employer to see if the employer would grant her a temporary leave of absence. The claimant learned her son would be hospitalized for about ten days but would need in-home care for two to three weeks. The claimant did not have any relatives to care for him and she could not afford to hire someone to care for him. The employer would not grant the claimant a leave of absence, because she had just started working for the employer. The employer informed the claimant that if she quit to take care of her son, she could reapply when he no longer needed care.

When her son no longer needed in-home care, the claimant contacted the employer to find out if she could reapply. The claimant was available to work the week of October 19, 2008. When the claimant called, she learned the employer was not hiring and there were no positions available for her.

The claimant established a claim for benefits during the week of September 28, 2008. On October 20, 2008, a representative's decision was mailed to the claimant and employer holding the claimant was not qualified to receive unemployment insurance benefits as of September 28, 2008.

The claimant received the representative's decision on before October 30, 2008. After the claimant received the October 20, 2008 decision she contacted her local Workforce office about some questions she had. The local Workforce representative told the claimant she should not appeal, because it would not do her any good and would just be a waste of time. Based on this advice, the claimant did not appeal. On November 4 or 5, the claimant talked to a representative from the Des Moines office and learned she had received incorrect information. The claimant appealed the same day that she talked to a Des Moines representative.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions 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 claimant's appeal was filed after the October 30, 2008 deadline for appealing expired.

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

The evidence establishes that the claimant's failure to file a timely appeal was due to misinformation she received from a Workforce representative, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has legal jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The law also states a claimant is qualified to receive benefits when she leaves employment for the necessary and sole purpose of taking care of a family member who has been injured, and the employer does not have any work for the claimant when she offers to return to work after the family member has recovered. Iowa Code § 96.5-1-c. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The facts establish the claimant left employment only after her son was injured in an accident and needed in-care home until October 20, 2008. The claimant unsuccessfully tried to obtain a leave of absence. After her son had recovered, she offered to return to work, but the employer did not have any work for her to do. Under these facts, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The claimant established a legal excuse for filing a late appeal from a representative's October 20, 2008, reference 01, decision. Therefore, the Appeals Section has legal jurisdiction to address the merits of the claimant's appeal. The representative's October 20, 2008 decision is modified in the claimant's favor. The claimant voluntarily left her employment, but the employer did not have work for the claimant when her son recovered from his injuries. Under these facts, the claimant is qualified to receive benefits as of October 19, 2008, the week in which she offered to return to work or was available to return to work. Since the claimant did not offer to return to work until her son recovered from his injuries, the issue of whether she is able to and available for work has already been addressed. The claimant is not eligible to receive benefits September 28 through October 18, 2008. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw