

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE I DEERING
Claimant

APPEAL NO. 08A-UI-06316-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

**OC: 04-06-08 R: 02
Claimant: Appellant (1)**

Iowa Code § 96.5-1 – Voluntary Leaving
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 5, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 5, 2008 and on August 25, 2008. Claimant participated along with her witness Blancon Edmond, her fiancée. Employer participated through Matt Miller. Department's Exhibit D-1 was received.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last-known address of record on May 5, 2008. The claimant did not receive the decision because she was incarcerated from April 11 until July 7. The claimant filed an appeal on July 8 the day after she was released and had an opportunity to file an appeal.

Claimant was employed as a utility worker full time beginning on September 7, 2007 through February 14, 2008 when she voluntarily quit.

The claimant called in on February 14 to indicate she was going to be late to work. She was told that when she arrived at work she would be written up for her poor attendance. The claimant never reported to work thereafter. The claimant would not have been discharged had she shown up for work on February 14 but she would have received her final written warning for her attendance. The claimant had asked to leave work early every day at 7:15 p.m. instead of her schedule end time of 7:30 p.m. and had been denied because it would have required other employees work longer to make up for her absence. In the last three and one-half months of her employment the claimant had been late twenty-two times. She had received previous write

ups for her attendance, some of which she had refused to sign. The claimant voluntarily quit when she stopped showing up for work after learning that she would receive a reprimand. Continued work was available.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received by her due to her incarceration. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal the day after she was released from jail. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's failure to show up for work after learning that she would be reprimanded, indicates her intention to quit her employment.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6-2 (amended 1998). The claimant's decision to quit after learning she would be reprimanded for her poor attendance was not a good-cause reason attributable to the employer for leaving. Benefits are denied.

DECISION:

The May 5, 2008, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css