

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DORIS A WALSH
Claimant

APPEAL NO. 12A-UI-10387-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACIFICA HEALTH SERVICES LLC
Employer

OC: 01/08/12
Claimant: Respondent (4)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the August 21, 2012, reference 03, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on September 25, 2012. Claimant Doris Walsh did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Kim Miles, human resources manager, represented the employer and presented additional testimony through Jeanette Cuppy, Director of Nursing. Exhibits One through Nine and Department Exhibits D-1 through D-3 were received into evidence.

ISSUES:

Whether the employers protest was timely. It was.

Whether the claimant voluntarily quit the employment for the sole purpose of accepting other employment and performed work for the new employer.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On January 11, 2012, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The notice of claim contained a warning that any protest must be postmarked, faxed, or returned by the due date set forth on the notice, which was January 23, 2012. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. On January 13, 2012, the employer completed its protest information on the notice claim document and attempted, unsuccessfully, to transmit the protest to Workforce Development by fax. On January 16, the employer again attempted, unsuccessfully, to transmit the protest to Workforce Development by fax. On January 17, the employer mailed the protest and envelope that bore a January 17, 2012 postmark. The employer indicated on the protest form a separation date of September 13, 2011. Workforce development received the employer's protest on January 19, 2012.

The claimant had worked for the employer during separate and distinct periods of employment. The most recent period of employment had ended on September 13, 2011, when the claimant

voluntarily quit to accept other employment closer to home. The claimant had been commuting from the Tama area to Des Moines and desired employment closer to home. The employer continued to have work available for the claimant. The claimant performed work for the new employer.

On January 20, 2012, a Workforce Development representative entered a reference 01 decision that allowed benefits to the claimant, but relieved the employer of liability for benefits, based on an October 15, 2010 separation. The workforce development representative's use of the 2010 separation date was in error and disregarded the September 13, 2011 separation date the employer had provided as part of its protest. Based on the belief that the June 20, 2012, reference 01, decision relieved the employer of liability for benefits, the employer took no further action in response to receiving that decision. The employer subsequently received quarterly statement of charges that included charges for benefits paid to the claimant. In August 2012, the employer received its second quarterly statement charges that included charges for benefits paid to the claimant. The quarterly statement of charges was mailed on August 9, 2012. On August 10, 2012, the employer contested the charge in writing. This resulted in an August 21, 2012, reference 03 decision, from which the employer is now appealing. That decision erroneously concluded that the employer had first protested the claim for benefits relating to the September 13, 2011 separation on August 10, 2012.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

- a. If transmitted via the United States postal service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
- b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

Iowa Code section 96.6-2 provides in pertinent part:

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 evidence in the record establishes that the employer filed a timely protest on January 17, 2012.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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.

[Emphasis added.]

The evidence in the record establishes that the claimant voluntarily quit the employment for the sole purpose of accepting other employment and did, in fact, perform work for the new employer. The separation would not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The voluntary quit was without good cause attributable to the employer, and Pacifica Health Services will not be charged for benefits paid to the claimant.

DECISION:

The Agency representatives August 21, 2012, reference 03, decision is modified as follows: The employer's protest was timely. The claimant voluntarily quit the employment without good cause attributable to the employer and for the sole purpose of accepting other employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw