

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABBIE M THIEL
Claimant

APPEAL NO: 09A-UI-15767-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAIRY QUEEN
Employer

OC: 09/06/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's October 2, 2009 decision (reference 04) that concluded she was not qualified to receive benefits as of September 27, 2009, because she had voluntarily quit her employment without good cause. A telephone hearing was held on November 23, 2009. The claimant participated in the hearing. Jeff Wieland 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.

ISSUES:

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 qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

On September 24, the claimant left work early for a doctor's appointment. At 3:45 p.m. a person identifying herself as the claimant's mother called the employer to report the claimant was in the hospital and was unable to work that night. At 4:30 p.m. another person identifying herself as the claimant's mother called the employer to talk to the claimant. The employer was confused after receiving these phone calls. The employer called the claimant on September 25 and asked her to come in a couple hours before her shift to talk to the general manager. The claimant heard rumors from other employees she was going to be discharged. Even though the rumors were not correct, the claimant decided to quit instead of going in early to have the general manager discharge her. The claimant did not go to her scheduled meeting or report to work that night. When the claimant did not go to the scheduled meeting or report to work as scheduled, the employer ended her employment because she quit by abandoning her job.

On October 2, 2009, a representative's decision was mailed to the claimant and employer. The claimant's decision was mailed to a 24th Street address that she had unexpectedly moved from

in late September or early October. The decision held she was not eligible to receive benefits as of September 26, 2009, because she voluntarily quit her employment without good cause attributable to the employer. The decision also informed the parties an appeal had to be filed no later than October 12, 2009.

After the fact-finding interview, the claimant waited about ten days for a decision. When she did not receive a decision, she called her local Workforce office in mid-October and learned she had been denied benefits. The claimant explained that she had not received the decision and asked that a copy be mailed to her new or current mailing address. The decision was mailed again around October 12, 2009. The claimant had the decision one or two days before she went to local Workforce office and filed her appeal on October 20, 2009.

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 section 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 12, 2009 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 did not have a reasonable opportunity to file a timely appeal because she had to move unexpectedly. The claimant took reasonable steps to learn about the outcome of the fact-finding interview. Since the claimant filed her appeal within a couple of days of receiving the decision, she established that she filed a timely appeal from the decision had been mailed for the second time on October 12.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The evidence does not establish the employer decided to discharge the claimant on September 25. The employer had concerns, but no decision had been made about the claimant's continued employment before the employer met with the claimant on September 25. The evidence does establish that the claimant quit as of September 25 because she incorrectly assumed the employer was going to discharge her. Instead of meeting with the general manager and reporting to work as scheduled on September 25, the claimant decided to quit and did not return to work. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code section 96.6-2.

The claimant established personal reasons for quitting. These reasons do not qualify her to receive benefits. As of September 27, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 2, 2009 decision (reference 04) is affirmed. The claimant established she filed a timely appeal from the decision that was mailed to her again on October 12, 2009. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of September 27, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs