

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLA SOTO MARROQUIN
Claimant

APPEAL NO: 15A-UI-09932-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

**OC: 11/23/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 13, 2015, reference 12, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 21, 2015. The claimant participated in the hearing with Attorney Andrea Buckley and Interpreter Ike Rocha. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

ISSUES:

The issues are whether the claimant's appeal is timely and whether she voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on August 13, 2015. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 23, 2015. That date fell on a Sunday so the appeal was actually due August 24, 2015. The appeal was not filed until September 2, 2015, which is after the date noticed on the disqualification decision. The claimant does not read or speak English and all of the mail she received from the Department was written in English. Consequently, the claimant could not read the representative's decisions. She eventually took them to work and had a co-worker translate them for her and then she called the Department August 31, 2015, and was told to file an appeal. The claimant did so September 2, 2015. While the claimant should have acted earlier, given the language barrier and the claimant's inability to read English, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time packaging worker for Curly's Foods/John Morrell from March 12, 2010 to May 28, 2014. She voluntarily left her employment because she was

pregnant and could not keep up with the heavy work and she felt there was injustice and favoritism shown by the employer toward some employees.

The claimant was one month pregnant at the time she decided to voluntarily leave her job. She did not have a note or any verbal instructions from her physician directing her to quit her job but made the decision that she could no longer continue to work there due to the physicality of the job on her own accord. She did not talk to the employer about her pregnancy or request any accommodations for her condition.

The claimant believed there was injustice and favoritism shown by the employer because some employees had physically demanding jobs while others had office jobs doing paperwork. The claimant was hired as a packager and performed the same job throughout her tenure with the employer.

The claimant's original claim date is November 23, 2014. Both John Morrell and Curly's Foods protested the claimant's unemployment benefits in December 2014. Decision reference numbers 01 and 03 were issued relieving the employer of charges as the Department found the claimant had worked and earned ten times her weekly benefit amount since her separation from this employer May 17, 2014. However, the Department issued those two decisions in error as the claimant needed to have worked and earned wages of at least \$3,350.00 (ten times her weekly benefit amount) since her May 17, 2014, separation. At that time the claimant had actually earned \$3,315.00 with Advance Services prior to the filing of her unemployment claim. As a result, the Department issued decision references 08 and 09 declaring decision reference numbers 01 and 03 null and void because they were issued in error as the claimant was \$35.00 shy of earning ten times her weekly benefit amount of \$335.00.

Because of that error, a new fact-finding interview was set up on the separation from Curly's Foods. Decision reference 12, which amended decision reference 10, was done in order to change the employer's name to Curly's Foods instead of John Morrell, even though they share the same employer identification number, because the claimant worked at Curly's Foods rather than John Morrell.

REASONING AND CONCLUSIONS OF LAW:

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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant chose to voluntarily leave her employment because she was one month pregnant and felt the job was too strenuous given her condition. She was not instructed to leave by a licensed and practicing physician and did not seek any accommodations from the employer. Instead she decided to quit due to her pregnancy and because she thought injustice and favoritism existed within the employer. The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions but is required if the employee is leaving due to health-related concerns. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant did not notify the employer of her pregnancy or her concerns resulting from same but did subsequently quit due to her condition. The claimant has not established that her leaving due to pregnancy was for good cause attributable to the employer.

The situation cited by the claimant to demonstrate injustice and favoritism was that some employees had easier jobs where they handled paperwork rather than physically demanding jobs like that which the claimant performed. While employees held different jobs throughout the company with some being more physical than others, the claimant was hired to work as a packager and the fact the employer had her continue in that role during the entire time she worked there is no evidence of injustice or favoritism. The claimant's stated reasons for leaving her employment do not rise to the level of good cause attributable to the employer. Therefore, benefits must be denied.

DECISION:

The August 13, 2015, reference 12, decision is affirmed. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css