

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GWEN A HOTH
Claimant

APPEAL NO. 07A-UI-03646-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALD'S
Employer

**OC: 10/01/06 R: 04
Claimant: Respondent (2)**

Section 96.5(1) – Voluntary Quit
Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

McDonald's filed an appeal from a representative's decision dated April 5, 2007, reference 01, which held that the protest to Gwen Hoth's claim was not timely filed. After due notice was issued, a hearing was held by telephone on April 24, 2007. Ms. Hoth participated personally. The employer participated by Judy Berg, Human Resources Manager, and Steve Nagel, General Manager. Exhibit One was admitted on the employer's behalf. The employer's protest was admitted as Division Exhibit I.

ISSUE:

The primary issue is whether the employer's protest should be deemed timely filed. If the protest is considered timely, the issue then becomes whether Ms. Hoth was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hoth filed an additional claim for job insurance benefits effective March 11, 2007. Notice of the claim was mailed to the employer on March 16, 2007. It was addressed to "McDonalds, City, Prairie du Chien, Wisconsin." Because the notice did not contain a street address, the employer's receipt of it was delayed. The Notice of Claim was received by the employer on April 3 and a protest was faxed to Workforce Development on April 4, 2007.

Ms. Hoth began working for McDonald's on November 6, 2006 and last performed services on February 8, 2007. She worked 32 or more hours each week as a crew person. She requested a medical leave of absence and completed the necessary paperwork on February 16, 2007. It was anticipated she would return to work on March 12, 2007. The leave of absence was not caused by any work-related condition. While she was on leave, Ms. Hoth sustained an injury to her knee when she fell on the ice on March 5.

As a result of her March 5 injury, Ms. Hoth must be able to sit as needed. She can stand comfortably for no more than three to four hours and then must rest for 30 minutes or one hour. The employer advised that her restrictions could not be accommodated but that she could return

when she was healthy. Because of her restrictions and the employer's inability to accommodate her, Ms. Hoth advised the employer that she would not be returning.

Ms. Hoth received job insurance benefits after filing her additional claim effective March 11, 2007. She received \$161.00 for each of the six weeks ending April 21, 2007.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether the employer's protest should be deemed timely filed. The protest was due on or before March 26, 2007. However, the receipt of the Notice of Claim was delayed because Workforce Development placed an incomplete address on the notice. Because the notice did not contain a street address, the employer did not receive it until April 3. The employer acted with due diligence in filing a protest by fax on April 4, 2007. Inasmuch as the employer did not receive the notice timely, it could not have perfected a protest within the timeframe mandated by Iowa Code section 96.6(2). For the reasons cited herein, the administrative law judge concludes that the protest shall be considered timely filed.

The next issue is whether Ms. Hoth was separated from employment for any disqualifying reason. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Hoth quit her job with McDonald's because of an injury suffered away from work. Because the injury happened away from work, it was not in connection with the employment. A voluntary quit is not attributable to the employer if caused by illness not connected to the employment. Wolf v. Iowa Employment Security Commission, 244 Iowa 999, 59 N.W.2d 216 (1953). Because Ms. Hoth's restrictions did not result from a work-related injury, her quit was not for good cause attributable to the employer. Accordingly, benefits are denied.

Ms. Hoth has received benefits since filing her additional claim effective March 11, 2007. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 5, 2007, reference 01, is hereby reversed. The employer filed a timely protest to Ms. Hoth's claim. She voluntarily quit employment for no 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Hoth has been overpaid \$966.00 in job insurance benefits for the period from March 11 through April 21, 2007.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css