

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIANNE BOURG**  
Claimant

**APPEAL NO: 12A-UI-10573-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ST MARK COMMUNITY CENTER**  
Employer

**OC: 07/24/11**  
**Claimant: Appellant (4)**

Iowa Code § 96.5(1)a – Voluntary Quit for Other Employment  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 7, 2012 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Tara Velez, the director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits and the employer's account will not be charged.

**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?

**FINDINGS OF FACT:**

The claimant started working for the employer as a part-time after school teacher on September 5, 2011. She worked an average of 2.5 hours a day, five days a week.

For personal reasons, the claimant needed move to Burlington, Iowa. The claimant applied for a job in Dallas City, Illinois. When the claimant quit her employment on April 8, 2012, she had been offered and accepted a part-time job at Dallas City Elementary School. She accepted the job in Dallas City because she needed to move to Burlington and this employer offered her a job as an after school teacher with the possibility of also working as a substitute teacher. The claimant started working at the Dallas City Elementary School immediately.

The claimant established a claim for benefits during the week of July 25, 2010. She established a new benefit year the week of July 24, 2011. On August 7, 2012, a determination was mailed to the claimant and employer. The determination informed the parties the claimant was not qualified to receive benefits as of April 8, 2011, and an appeal had to be filed or postmarked on or before August 17, 2012. Neither the claimant nor the employer received the August 7, 2012

determination. After the claimant received the August 24, 2012 determination, she filed an appeal on August 29, 2012.

#### **REASONING AND CONCLUSIONS OF LAW:**

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the August 7, 2012 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). Since she did not receive the August 7, 2012, determination, the claimant did not have a reasonable opportunity to file a timely appeal.

The claimant's failure to file a timely appeal was due to an Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses her delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has legal authority to make a decision on the merits of her appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits because she has accepted other employment, she is not disqualified from receiving benefits and the employer's account will not be charged. Iowa Code § 96.5(1)a. Based on the facts in this case, the claimant quit, in part, because she accepted another job in the Burlington, Iowa area. Therefore, she is not disqualified from receiving benefits and the employer's account will not be charged.

#### **DECISION:**

The representative's August 7, 2012 determination (reference 03) is modified in the claimant's favor. The claimant did not file a timely appeal from the August 7 determination, but she established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant voluntarily quit her employment for reasons that qualify her to receive benefits. As of April 8, 2011, the claimant remains qualified to receive benefits. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw