

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARGARET J NEWTON**  
Claimant

**APPEAL NO: 13A-UI-10344-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALORICA**  
Employer

**OC: 07/15/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 19, 2013 determination (reference 08) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment on August 18, 2012 for reasons that do not qualify her to receive benefits. Hearing notices were mailed to the parties on September 16, 2013.

The claimant participated in the October 4 hearing with her attorney, John Beauvais. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of August 19, 2012.

**ISSUES:**

Did the claimant file a timely appeal or establish 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 established a claim for benefits during the week of July 15, 2012. At her former job the claimant earned \$18 an hour.

On July 24, 2012, the claimant accepted a job with the employer as a customer service representative to work 35 hours a week. The employer paid her \$9 an hour. The claimant was to be in training for nine weeks. After the claimant was in training for a week, she received information from two Workforce representatives (Claimant Exhibit A) that the job she had accepted would not be considered suitable for her because she had been earning \$18 and this job only paid her \$9 an hour. After the claimant was in training for four weeks, she resigned on August 18, 2012, because she would be required to work noon to 8 p.m. The claimant has a young son and did not have anyone to take care of him when she would be working at night.

After the claimant quit, she contacted the Department. The claimant was told that because she quit a temporary, part-time job there were no adverse consequences to her for quitting and she would continue receiving benefits. The employer was not a base period employer under the claimant's July 15, 2012 claim.

When the claimant established a new benefit year the week of July 14, 2013, the employer received a notice of claim and a fact-finding interview was scheduled. After a fact-finding was completed, a claims specialist issued an August 19, 2013 determination (reference 08) that disqualified the claimant from receiving benefits as of August 19, 2012, because she had quit on August 18 for reasons that did not qualify her to receive benefits. The determination also informed the parties an appeal had to be filed or postmarked on or before August 29, 2013.

The claimant received the August 19 determination before August 29. She understood she would not be qualified to receive benefits as of July 14, 2013, or when she established a new benefit year. She did not realize she would be disqualified from receiving benefits as of August 12, 2012. After the claimant received an August 28, 2013 overpayment determination, she then went to her attorney on September 6. An appeal was filed on the claimant's behalf on September 9, 2013.

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

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination 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 29, 2013 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). The claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant's failure to file a timely appeal was not due to any Agency error or recent misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Even though the claimant received incorrect information in August 2012, she learned in August 2013 that she would be held disqualified from receiving benefits based on her reasons for quitting in mid-August 2012. The claimant incorrectly assumed she would only be held ineligible to receive benefits as of July 14, 2013, not August 19, 2012. The claimant did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the August 19, 2013 determination cannot be changed, and the claimant remains disqualified from receiving benefits as of August 19, 2012.

In the alternative, assume the claimant has a legal excuse for filing a late 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). Since the claimant quit, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant quits without good cause when she quits because of dissatisfaction with her wages, but she knew the wage when she accepted employment. 871 IAC 24.25(13). The law also presumes a claimant quits without good cause when she leaves because she does not like a shift she is scheduled to work. 871 IAC 24.25(18).

Since the claimant accepted the job knowing she would be paid \$9 an hour, the fact it was 50 percent an hour less than what she had been earning is not relevant or establishes good cause for quitting. If the claimant had declined the offer of work, then under the refusal of offer of work laws, the claimant would have had good cause to decline the customer service job offer. But she accepted the job knowing it only paid \$9 an hour.

Any time there is an employment separation, the separation must be analyzed to determine if the reasons for the separation are for disqualifying or nondisqualifying reasons. The information the claimant received that it was all right to continue receiving benefits because she quit a temporary, part time job was incorrect. While most representatives are extremely knowledgeable, a verbal opinion means essentially nothing. Issues should be formally addressed so both parties, not just one, have the opportunity to present information to the Department.

In this case, the claimant voluntarily quit her employment for personal reasons, but her reasons do not qualify her to receive benefits. As of August 19, 2012, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's August 19, 2013 determination (reference 08) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. This means the determination that the claimant voluntarily quit her employment on August 18, 2012 for reasons that do not qualify her to receive benefits cannot be changed. As of August 19, 2012, the claimant is not qualified to receive benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs