

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY K LAMBIRTH
Claimant

APPEAL NO. 08A-UI-00743-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVENTURE STAFFING
Employer

**OC: 04-08-07 R: 01
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 7, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on February 6, 2008. Claimant did participate. Employer did participate through Cyd Hall, Office Manager. Department's Exhibit D-1 was received.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit her employment without 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 claimant's last-known address of record on January 7, 2008. The claimant did not receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 17, 2008. The appeal was not filed until January 23, 2008, which is after the date noticed on the disqualification decision.

The claimant was out of town to attend a wedding from the end of December until January 12 or 13, 2008 when she returned to Iowa. The claimant was then at her Mother's house assisting her Mother with a hospitalization and did not open the fact-finding decision until January 22, 2008. Her appeal was filed on January 23, 2008.

The claimant was last assigned to work at AMPI as a production worker beginning on December 4, 2007 through December 7, 2007 when she voluntarily quit the assignment. The claimant quit the assignment because she did not think AMPI was a family oriented business. The claimant worked on December 4, 6 and 7. On December 5 she called in and indicated she would not be at work due to a sick child. On December 5 the claimant called Adventure Staffing

to notify them that she would not be reporting to work at AMPI. The claimant knew that if she was going to be absent she needed to report her absence to Adventure Staffing. The claimant wanted to be off work on December 8 to be with her fiancé who was being hospitalized and she called AMPI to tell them she would not be in. When Jerry from AMPI told her he did not want her to miss work and that her absence would jeopardize her assignment, the claimant told him that she quit.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received by her until after the appeal period had expired. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

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.

871 IAC 24.25(21), (33) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). When the claimant called AMPI to tell them she would be absent, the employer told her that they were not happy that she was going to miss work. Because the employer was not happy that she was going to miss work (her second miss in five days of employment), the claimant decided to quit determining that the employer was not family oriented. Her decision to quit because the employer was unhappy with her attendance was not good cause reasons attributable to the employer for leaving the employment. Benefits are denied.

DECISION:

The January 7, 2008, reference 03, decision is affirmed. The claimant's appeal was timely. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs