

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CATHERINE E GUSTAFSON
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-00372-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Catherine Gustafson (claimant) appealed a representative's October 2, 2020, decision (reference 01) that concluded eligibility to receive a reduced amount of unemployment insurance benefits due to a part-time voluntarily quit with the Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 5, 2021. The claimant participated personally. The employer was represented by Barbara Buss, Hearing Representative.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-00372.S1 and 20A-UI-00373.S1 were heard at the same time.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the parties' last known address of record on October 2, 2020. The decision was not received by the claimant. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 12, 2020. The claimant received an overpayment decision on or about November 25, 2020. She took the decision to a human resources department at a school and they helped her file an appeal on December 8, 2020. The claimant did not want to receive unemployment insurance benefits from the employer.

The claimant filed for unemployment insurance benefits with an effective date of April 26, 2020. Her weekly benefit amount was determined to be \$481.00. After the October 2, 2020, reference 01 decision, her weekly benefit amount was determined to be \$397.00. The claimant received benefits of \$481.00 per week from April 26, 2020, to the week ending May 16, 2020. This is a

total of \$1,443.00 in state unemployment insurance benefits April 26, 2020. She also received \$1,800.00 in Federal Pandemic Unemployment Compensation for the three-week period ending May 16, 2020. The difference between \$481.00 and \$397.00 is \$84.00. \$84.00 for three weeks is \$252.00.

REASONING AND CONCLUSIONS OF LAW:

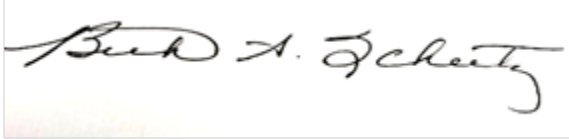
Iowa Code section 96.6(2) provides:

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, subsections 10 and 11, 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. 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). The claimant appealed the overpayment decision, which was the first notice of disqualification. She did not timely appeal the overpayment decision even though she had sufficient opportunity. Her appeal cannot be considered timely. In addition, the claimant agrees with the decision. She does not want receive her unemployment benefits from the employer.

DECISION:

The October 2, 2020, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is eligible to receive unemployment insurance benefits without the employer's wages being used on the claim.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

February 18, 2021
Decision Dated and Mailed

bas/kmj