

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY M SMITH
Claimant

APPEAL NO. 10A-UI-03528-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

**Original Claim: 10/04/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's February 3, 2010 decision (reference 05) that held she was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on April 8, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Sue Lester, a human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 qualifying her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 28, 2009. The claimant worked as a full-time customer service representative until December 7, 2009. The claimant was scheduled to work after December 7, but did not call or report to work. The employer called her December 8 through 21. The claimant did not respond to any of the employer's phone calls. The claimant did not return to work. As of December 21, the employer no longer considered her an employee.

The claimant reopened her claim for benefits during the week of January 3, 2010. On February 3, 2010, a representative's decision was mailed to the claimant and employer. This decision held the claimant was not qualified to receive unemployment insurance benefits as of December 7, 2009.

In her March 2, 2010 appeal, the claimant indicated she had never received the February 3, 2010 decision.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions 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 claimant's appeal was filed after the February 15, 2010 deadline for appealing expired. Since February 13 was a Saturday, the deadline to appeal was extended by law to Monday, February 15, 2010.

The claimant's failure to file a timely appeal may be 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) would excuse the delay in filing an appeal. Considering the administrative record that is most favorable to the claimant, the record indicates she had a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address 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, or an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts indicate the claimant voluntarily quit her employment by abandoning her job. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The claimant may have had compelling reasons for abandoning her employment. She did not establish that she quit for reasons that qualify her to receive benefits. Therefore, as of December 7, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative's February 3, 2010 decision (reference 05) is affirmed. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 7, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw