

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LADONNA V BRINSON

Claimant

APPEAL NO: 08A-UI-07329-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERTS DAIRY COMPANY

Employer

**OC: 06/15/08 R: 12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

LaDonna V. Brinson (claimant) appealed a representative's July 9, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Roberts Dairy Company (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2008. The claimant participated in the hearing. Marcia Hupp, the division controller, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 did she 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 through a temporary firm on October 31, 2007. The employer hired her as a full-time customer service employee on February 25, 2008. The claimant's job was not in jeopardy.

The claimant had a one-year lease on her apartment that ended on May 31, 2008. The claimant started looking for another apartment or house to move to in April. The claimant could not find anything she liked or afford. The claimant unsuccessfully asked her landlord to extend her lease for a short time.

The claimant's relatives helped her move back to the Chicago area the weekend of May 31. When the claimant finished her shift on May 30, she told the employer she was moving that weekend. On Monday, June 2, the claimant contacted the employer and indicated she would not be at work that day because she had to take back the moving van back. The claimant did

not call or contact the employer anytime after June 2, 2008. The employer attempted to contact the claimant when she did not return to work. The employer was unable to make any contact with the claimant.

The claimant established a claim for benefits during the week of June 15, 2008. On July 9, 2008, a representative's decision was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of June 15, 2008, because she had voluntarily quit her employment.

The claimant received the representative's decision on or about July 15, 2008. She did not have her instructional pamphlet available so called the Des Moines office to find out what she needed to do. A Des Moines representative told the claimant to fax her appeal to the Appeals Section. The claimant did not have immediate access to a fax and did not fax her appeal until August 13, 2008. The claimant could have mailed her appeal letter by July 19 but did not because she had been told to fax it.

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 section 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 July 19 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

The evidence, however, establishes that the claimant's failure to file a timely appeal was due to Agency misinformation, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has legal jurisdiction to make a decision on the merits of the 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 section 96.5-1. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code section 96.6-2.

The claimant's decision to move out of the area because of housing issues amounts to a personal reason for quitting. 871 IAC 24.25(2). For unemployment insurance purposes, the claimant did not establish that she quit for reasons that qualify her to receive benefits. As of June 15, 2008, the claimant is not qualified to receive benefits.

DECISION:

The representative's July 9, 2008 decision (reference 01) is affirmed. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of her appeal. The claimant voluntarily quit her employment for personal reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 15, 2008. 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/pjs