

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASRAR A IBRAHIM
Claimant

APPEAL NO: 07A-UI-06774-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/20/07 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Asrar A. Ibrahim (claimant) appealed a representative's June 14, 2007 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 14, 2007. The claimant participated in the hearing. Terry Carmichael appeared on the employer's behalf. Francis Chan translated the hearing. 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 establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on July 3, 2006. The claimant worked full time. When the claimant accepted employment, she rode to work with a friend. When the claimant's friend ended her employment, the claimant did not have a way to get to work. The claimant asked other employees about riding to work, but her co-workers already had a full carload. The claimant could not find anyone to ride to work with after October 17, 2006.

The claimant's last day of work was October 17, 2006. The employer did not know the claimant had transportation problems. The claimant just stopped reporting to work.

The claimant established a claim for unemployment insurance benefits during the week of May 20, 2007. On June 14, 2007, a representative's decision was mailed to the claimant and employer holding the claimant was not qualified to receive unemployment insurance benefits.

The claimant did not receive the representative's decision until mid-July 2007. The Department did not use the claimant's correct mailing address. As soon as the claimant knew about the adverse decision, she filed an appeal at her local Workforce office on July 9, 2007

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 June 24 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 did not have a reasonable opportunity to file a timely appeal because the Department did not mail the representative's decision to the claimant's correct address of record.

The claimant's failure to file a timely appeal was due to a Department error, which under 871 IAC 24.35(2), excuses the delay in filing an appeal. Even though the claimant did not file a timely appeal, she established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit 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 with good cause attributable to the employer. Iowa Code section 96.6-2.

The law presumes a claimant voluntarily quits employment without good cause when she leaves because of transportation problems. 871 IAC 24.25(1). The facts establish the claimant quit or abandoned her employment because she did not have transportation to work. While this is a compelling reason for quitting, this reason does not qualify the claimant to receive unemployment insurance benefits. As of May 20, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 14, 2007 decision (reference 04) is affirmed. The claimant did not file a timely appeal, but she 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 unemployment

insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 20, 2007. 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