

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN V RIOS
Claimant

APPEAL NO: 11A-UI-14978-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMINGTON SEEDS LLC
Employer

**OC: 10/09/11
Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(1)g – Requalification
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 7, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Tervor Wulf appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits as of October 23, 2011.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for reasons constituting work-connected misconduct?

Has the claimant earned ten times his weekly benefit to requalify to receive benefits?

FINDINGS OF FACT:

The claimant had been working for the employer at least since 2005. Initially, the employer allowed employees to work more than 40 hours a week. Prior to the claimant's employment separation, management did not want employees to work more than 40 hours a week.

In early February 2011, the claimant worked more than 40 hours a week. The next week, Wulf told the claimant he needed to go home early so the two weeks he worked did not total more than 80 hours. The claimant indicated that he could not meet his financial obligations if he was unable to work 40 hours a week. The claimant indicated he was quitting because he had to work 40 hours or more a week. The claimant's last day of work was February 11, 2011.

The claimant started working at Monsanto in mid-June 2011. He worked at Monsanto until October 21, 2011. During the months the claimant worked at Monsanto, he earned gross wages of \$5,851.

When the claimant learned his employment at Monsanto was going to end, he established a claim for benefits during the week of October 9, 2011. His maximum weekly benefit amount on this claim is \$436.

On November 7, 2011, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving unemployment insurance benefits. The determination informed the parties an appeal had to be filed on or before November 17, 2011.

The claimant received the representative's determination on Saturday, November 19. He faxed his appeal on November 20, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. 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). An unemployment benefits contested case is commenced with the filing, by mail, facsimile or in person, a written appeal. Iowa Code § 17A-12-9, 871 IAC 26.4(1).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 November 17, 2011 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 he did not receive the determination until November 19, 2011.

The claimant's failure to file a timely appeal was due to an Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAN 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 jurisdiction to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the employer discharged the claimant.

The employer could not allow the claimant to work overtime hours and warned him about working more than 40 hours a week. Since the claimant had worked more than 40 hours one week, the employer sent him home early the next week. The claimant wanted to work 40 hours

the second week and quit after the employer he told he could not work 40 or more hours the second week. The claimant had compelling reasons for quitting, but he quit for reasons that do not qualify him to receive benefits.

Since the claimant earned more than ten times his weekly benefit amount by October 21, he is qualified to receive benefits as of October 23, 2011. Iowa Code § 96.5(1)g.

DECISION:

The representative's November 7, 2011 determination (reference 01) is modified in the claimant's favor. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The claimant voluntarily quit his employment in mid-February 2011 for reasons that do not qualify him to receive benefits. Since Monsanto paid the claimant more than ten times weekly benefit amount for insured work June 20 through October 21, 2011, the claimant has earned requalifying wages and is eligible to receive benefits as of October 23, 2011. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw