

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KARYN E JOYCE
407 CROMBIE
ATLANTIC IA 50022**

**CASS COUNTY CLEANERS LC
500 CHESTNUT
ATLANTIC IA 50022**

**Appeal Number: 05A-UI-02627-RT
OC: 03-01-05 R: 01
Claimant: Respondent (5)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.6-2 – Initial Determination (Timeliness of Protest)
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Cass County Cleaners, L.C., filed a timely appeal from an unemployment insurance decision dated March 1, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Karyn E. Joyce, because the employer's protest was not timely. After due notice was issued, a telephone hearing was held on March 30, 2005, with the claimant participating. J. C. VanGinkel, Owner, participated in the hearing for the employer. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective February 13, 2005. Notice of the claimant's claim was sent to the employer on February 15, 2005. The notice indicated that a protest was due by February 25, 2005. However, the employer faxed its protest to Iowa Workforce Development on February 28, 2005, three days late. The protest was dated February 28, 2005. The reason for the delay in the filing of the protest was that the employer did not receive the protest until February 26, 2005 at the earliest. This was a Saturday. By that time the protest was already due. The employer learned of the protest on Monday, February 28, 2005 and immediately prepared and faxed the protest.

Because the administrative law judge hereinafter concludes that the employer's protest was late but that the employer has demonstrated good cause for the delay in the filing of its protest, the administrative law judge further finds: The claimant was employed by the employer as a full-time manager from March 24, 2004 until she voluntarily quit effective April 2, 2004. On April 1, 2004, the claimant met with J. C. VanGinkel, Owner, and the employer's witness, and informed him that she would be quitting effective the next day, April 2, 2004, which was a Friday. The claimant quit because she was overwhelmed with the work and had not anticipated the volume of the work when she was hired. The claimant had expressed concerns prior to this time but had never threatened or indicated or announced an intention to quit. The claimant did not have a job in hand on April 1, 2004 but went to work shortly thereafter with A & J Cleaning Services, L.L.C. and earned in excess of \$10,000.00 in the second, third and fourth quarters of 2004. The claimant's weekly benefit amount is \$272.00. The claimant's earnings have easily exceeded ten times her weekly benefit amount of \$272.00 or \$2,720.00 since separating from the employer herein. The claimant has requalified to receive unemployment insurance benefits following her separation from the employer herein. Pursuant to her claim for unemployment insurance benefits filed effective February 13, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,632.00 as follows: \$272.00 per week for six weeks from benefit week ending February 19, 2005 to benefit week ending March 26, 2005. The claimant also received unemployment insurance benefits in the amount of \$424.00 in a prior benefit year effective February 15, 2004 as follows: \$193.00 for benefit week ending February 5, 2005 (earnings \$209.00) and \$231.00 for benefit week ending February 12, 2005 (earnings \$171.00).

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer established good cause for such failure. The administrative law judge concludes that although the employer's protest was not timely, the employer has demonstrated good cause for the delay in the filing of its protest and such protest should, therefore, be accepted. The administrative law judge further concludes that he has jurisdiction to reach the remaining issues.
2. Whether the claimant's separation from the employment was a disqualifying event. It was potentially disqualifying but the claimant has requalified to receive unemployment insurance benefits following her separation from the employer herein and, therefore, she is not disqualified to receive unemployment insurance benefits.

3. Whether the claimant is overpaid unemployment insurance benefits. She is not, because benefits received following the separation from the employer herein were received after the claimant had requalified to receive unemployment insurance benefits following the separation from the employer herein.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(21) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

Although not set out on the notice of appeal and telephone hearing, the parties permitted the administrative law judge to take evidence on and decide, if necessary, whether the claimant's separation was disqualifying and whether the claimant is overpaid unemployment insurance benefits. The administrative law judge concludes that he has jurisdiction to reach those issues. The parties agree, and the administrative law judge concludes, that the claimant left her employment voluntarily effective April 2, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. Both the employer's witness, J. C. VanGinkel, Owner, and the claimant, credibly testified that the claimant left her employment voluntarily because she was overwhelmed with the work. It appears that the claimant was dissatisfied with the work environment but this is not good cause attributable to the employer. Although the claimant had expressed concerns to the employer about these matters, she had never indicated or announced an intention to quit prior to her quit. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily without good cause attributable to the employer and would be disqualified to receive unemployment insurance benefits. However, the administrative law judge further concludes that following this disqualifying separation on April 2, 2004, the claimant has easily requalified to receive unemployment insurance benefits by earning in excess of ten times her weekly benefit amount of \$272.00 or \$2,720.00 from a subsequent employer, A & J Cleaning Services, L.L.C. Therefore, the claimant is not disqualified to receive unemployment insurance benefits but any

benefits to which the claimant is entitled shall not be charged to the account of the employer herein. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible but any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,056.00 since separating from the employer herein on or about April 2, 2004. All of these benefits were received by the claimant after she had requalified to receive unemployment insurance benefits as a result of earnings from a subsequent employer as noted above. Therefore, the administrative law judge concludes that the claimant is not overpaid these unemployment insurance benefits but none of these benefits shall be charged to the account of the employer herein because her separation from the employer herein was disqualifying but for the fact that the claimant had requalified to receive unemployment insurance benefits following that separation.

Iowa Code section 96.6-2 provides in pertinent part:

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.

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

871 IAC 24.35(2) provides:

- (2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.
 - a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
 - b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
 - c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.
 - d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had good cause for the delay in the filing of its protest. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that although its protest was not timely, the employer had good cause for the delay in the filing of its protest. On its face as shown at Department Exhibit One and as set out in the findings of fact, the employer's protest is three days late. The reason the protest was late was that the employer did not receive the notice of claim until February 26, 2005 which was after the due date of the protest. Accordingly, the administrative law judge concludes that the delay in filing the protest was because of a delay or other action by the U.S. Postal Service and is good cause for a delay in the filing of its protest. Accordingly, the administrative law judge concludes that the employer has failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law but did establish or demonstrate good cause for such a delay. The administrative law judge concludes that the protest should be accepted and that he has jurisdiction to make a determination with respect to the other issues presented.

DECISION:

The representative's decision of March 1, 2005, reference 01, is modified. The claimant, Karyn E. Joyce, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she has requalified to receive unemployment insurance benefits following her disqualifying separation from the employer herein on April 2, 2004. The claimant voluntarily left her employment with the employer herein without good cause attributable to the employer and this separation would be potentially disqualifying but the claimant has requalified to receive unemployment insurance benefits following her separation from the employer herein. Any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein. The claimant is not overpaid any unemployment insurance benefits because all unemployment insurance benefits received by the claimant following her

separation from the employer herein were received after she had requalified to receive unemployment insurance benefits. The employer has demonstrated good cause for the delay in the filing of its protest and the protest is, therefore, accepted.

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