

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HAMDİ A ABDİRAHMAN
Claimant

WALMART INC
Employer

APPEAL 20A-UI-08738-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 5/31/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timely Appeal

STATEMENT OF THE CASE:

On July 29, 2020, the claimant filed an appeal from the July 16, 2020, (reference 01) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on Sept 3, 2020. Claimant participated. Employer participated through Zondra Wilburn, Frontend Coach.

ISSUES:

Did claimant file a timely appeal?
Did claimant quit employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 9, 2019. Claimant last worked as a part-time cashier. Claimant was separated from employment on March 23, 2020, when she submitted a resignation. Claimant testified that she resigned because her supervisor, Ms. Wilburn, was rude to her on a number of occasions. On March 14, 2020 claimant requested to work mornings due to a family emergency and was told no by Ms. Wilburn. Claimant testified that Ms. Wilburn was rude to her at other times and that her employer would not let her change jobs when she hurt her collarbone in the fall of 2020. Claimant testified that it was her intent to give a two-week notice. The form she filed for her resignation did not state that the claimant's resignation was effective in two weeks. Claimant was taken off the schedule when she submitted her resignation. Claimants' primary language is Somali.

REASONING AND CONCLUSIONS OF LAW:

The first issue to determine is whether claimant's appeal is timely. Iowa Code section 96.6(2) provides:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. E.g. *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 division error or misinformation or to delay or other action of the United States postal service."

The claimant's appeal is timely. IWD has an obligation to provide notices to persons with limited English proficiency in their primary language¹. Somali is a language that a significant portion of

¹ U. S. Dept. of Labor Regulations. Federal Register: May 29, 2003 (Volume 68, Number 103, Page 32289-32305].

the clients of IWD use as a primary language. The fact finding decision is a "vital document" in that it conveys important information about eligibility for unemployment benefits and appeal rights. Guidance issued by the U.S. Department of Labor and U.S. Justice Department indicates vital documents should be provided to individuals in their primary language. This applies to IWD, as IWD receives funding from the federal government. The failure to provide a copy of the fact-finding decision and the appeal rights in Spanish is good cause for filing a late appeal. The claimant did send an appeal with the assistance of a workforce development office as soon as she learned that the decision was adverse to her claim. The claimant acted promptly when she discovered she had been denied benefits. The record shows the claimant had legal cause for filing a late appeal. I find the appeal is timely.

The next issue to determine is whether claimant had good cause attributable to the employer for resigning her employment.

Ordinarily "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code Section 96.2. *O'Brien v. EAB* 494 N.W.2d 660, 662 (Iowa 1993) (citing *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the test of good faith." *Wiese v. IA Dept. of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986). "Common sense and prudence must be exercised in evaluating all of the circumstances that led to an employee's quit in order to attribute the cause for the termination." *Id.*

There are two rules that are most applicable in this case.

The first is Iowa Admin. Code r. 871-24.26(4) that provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The second rule is Iowa Admin. Code r. 871-24.25(21) that 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.

I find that claimant has not shown the working conditions were intolerable. The claimant felt her supervisor was rude and did not listen to her. The claimant did not provide sufficient evidence that her working conditions were objectionable unreasonable. The evidence shows claimant left her employment due to dissatisfaction with her work environment. This is not considered good

cause attributable to the employer. I find claimant voluntarily quit her employment without good cause attributable to her employer.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 16, 2020, (reference 01) unemployment insurance decision is affirmed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided claimant is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though claimant is not eligible for regular unemployment insurance benefits under state law, claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-informatio>
<https://www.iowaworkforcedevelopment.gov/Pua-application>



James F. Elliott
Administrative Law Judge

September 8, 2020
Decision Dated and Mailed

je/sam