

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ROXANNE M REIMERS**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 24A-UI-00869-PT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/10/23**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On January 22, 2024, the claimant, Roxanne Reimers, filed an appeal from the December 29, 2023 (reference 01), unemployment insurance decision that held claimant ineligible for benefits after a separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 12, 2024. The claimant participated personally. The employer, Hy-Vee Inc., was represented by Corporate Cost Control representative Melissa Hill and participated through Human Resources Generalist Thein May and Human Resources Generalist Tina Castro. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Was the claimant's appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time quality control clerk from April 26, 2022, until her employment with Hy-Vee Inc. ended on November 30, 2023. As a quality control clerk, the claimant was responsible for reviewing and testing products to ensure the products met quality standards and for overseeing check-out stations to make sure the stations were operating correctly.

The employer has a written employee manual that contains an attendance policy. Pursuant to the policy, if an employee is sick and cannot work, the employee is required to call an attendance hotline prior to the start of their shift to inform the employer of their absence. Employees receive one attendance point for each unanticipated absence unless the employee provides a doctor's note, at which point the employer will excuse the absence. Employment is

terminated if an employee receives more than 10 points in a one-year period. The Claimant received a copy of, and was familiar with, the employer's attendance policy.

On September 28, 2023, the employer issued claimant a final written warning, which informed the claimant that she had received eight attendance points in the rolling one-year period and warned the claimant that three more points could result in termination of her employment.

The claimant called out sick from work on November 26, 27, and 28, 2023. On November 29, 2023, claimant returned to work and provided the employer a doctor's note excusing her from work from November 26 through 28. Claimant worked her full shift on November 29, 2023. Prior to the start of claimant's shift on November 30, 2023, the claimant texted her supervisor stating that she was resigning effective immediately for personal reasons. The claimant's supervisor sent a copy of the message to upper management and informed the employer that the claimant had resigned. The employer accepted the claimant's resignation. At the time claimant offered her resignation, the employer had excused her previous three absences, never told the claimant her employment was being terminated, and had taken no steps towards terminating the claimant's employment. The employer had continuing work available for the claimant had she not resigned.

At the hearing, the claimant denied voluntarily quitting her employment. The claimant testified that on November 30, 2023, she called the attendance hotline to inform the employer that she was sick and would be absent from work. Claimant said she then called her supervisor to let her supervisor know she would be absent. Claimant testified that when she spoke with her supervisor, her supervisor told her that her employment had been terminated due to excessive, unexcused absences. The claimant believed her employment was terminated at that time.

Although claimant's supervisor did not testify at the hearing, the employer's witnesses testified that they spoke with claimant's supervisor and reviewed the text message claimant sent informing her supervisor of her resignation. The employer's witnesses also testified that the employer reviewed the attendance hotline call-log for November 30, 2023, and there was no record that the claimant called-out sick from work that day.

The claimant filed an original claim for unemployment insurance benefits with an effective date of December 10, 2023. On December 29, 2023, Iowa Workforce Development mailed a copy of the reference 01 decision to the claimant's previous mailing address. The claimant never received the decision. The claimant learned of the decision after speaking with an employee at her local IowaWorks Center. The claimant promptly filed her appeal after learning of the decision.

## **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appeal is timely. For the reasons that follow, the administrative law judge determines the claimant's appeal is timely.

Iowa Code section 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871—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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—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 division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also, *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982).

In this case, the claimant did not receive the decision. Therefore, the appeal notice provisions were invalid. The claimant did not have a reasonable opportunity to file a timely appeal. The claimant filed her appeal promptly after learning of the decision. The claimant's appeal is considered timely.

As the claimant's appeal is considered timely, the next issue is whether the claimant was discharged for misconduct or whether she voluntarily quit her employment with good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit her employment without good cause attributable to the employer. Benefits are denied.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code §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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer, or that another exception to the rule exists. Iowa Code § 96.6(2). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). If the claimant fails to meet their burden, the separation from employment is disqualifying.

Iowa Admin. Code r. 871-24.25(33) and (37) provide:

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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The administrative law judge must balance these two principles in this matter. Whereas the claimant's testimony was, at times inconsistent, vague, and difficult to follow, the employer chose not to bring the witness who accepted claimant's resignation to testify at the hearing. Although the employer did not call the claimant's supervisor to testify, the employer's witnesses credibly testified that they had reviewed the November 30, 2023, text message claimant sent to her supervisor as well as the email claimant's supervisor sent informing the employer of claimant's resignation. As claimant's testimony was at times difficult to follow and inconsistent with other believable evidence, the administrative law judge has given greater weight to the employer's version of events than to the claimant's version of events.

In this case, the claimant's written resignation to her supervisor is both evidence of her intention to sever the employment relationship and an overt act carrying out her intention. Although the claimant had received a final warning for her attendance and had recently been absent from work due to illness, the claimant provided a doctor's note and the employer excused her most recent absences. Moreover, the employer never told claimant that her employment was being terminated, it had taken no steps towards terminating her employment, and continuing work was available to the claimant. Under these circumstances, the administrative law judge concludes that the claimant was not discharged on November 30, 2023, and the claimant's belief that she had been discharged was erroneous. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer. As such, benefits must be denied.

**DECISION:**

The claimant's appeal is accepted as timely. The December 29, 2023, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment on November 30, 2023, without good cause attributable to the employer. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.



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Patrick B. Thomas  
Administrative Law Judge

February 20, 2024  
Decision Dated and Mailed

pbt/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.