

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHEILA R TOMS

Claimant

APPEAL NO. 21A-UI-17105-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPPORTUNITY LIVING

Employer

OC: 03/28/21

Claimant: Appellant (4R)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Admin. Code r. 871-24.27 – Voluntary Quit from Part-time Employment

STATEMENT OF THE CASE:

The claimant filed a late appeal from the July 13, 2021, reference 01, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on October 21, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 29, 2021. Claimant participated personally and was represented by attorney Stuart Higgins. Brook Mikkelsen represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, WAGE-A and the July 13, 2021, reference 01, decision.

ISSUE:

Whether the claimant's appeal was timely.

Whether the claimant's voluntary quit was without good cause attributable to the employer.

Whether the quit was from part-time employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Opportunity Living as a PRN (part-time, on-call) Licensed Practical Nurse. She began the employment in 2018 and last performed work for the employer on July 19, 2020. The employer provides home and community based support services to adults with disabilities. The employer's clients reside in group residences, eight clients per home. The claimant's duties included passing medications to clients, checking on clients, assisting clients with feeding issues, including tube feedings, and assessing clients, including assessing clients in cases of injury.

Throughout the employment with Opportunity Living, the claimant had other employment with Heartland Siding and Window, where the claimant worked as an installer. The work with Heartland was seasonal, insofar as the company ceases work during the winter months, when the weather is not conducive to installing windows. During 2020, the claimant's employment with Heartland was impacted by the COVID-19 pandemic.

In February 2020, the claimant developed a respiratory infection. Treatment of the infection included breathing treatments. The claimant would take the breathing treatments in the workplace as needed. The claimant tested negative for COVID-19. The claimant went off work in March 2020 and returned to work in June 2020, at which time she was released by her doctor to return to work without medical restrictions.

The claimant again went off work in July 2020, following her July 19, 2020 last day worked. The claimant was feeling fatigued. The claimant continued to work reduced hours in her other employment at Heartland. The claimant did not accept additional work offered by Opportunity Living. The employer had continued to have part-time, on-call work for the claimant. In September 2020, the claimant consulted with a doctor regarding shortness of breath.

On October 21, 2020, the claimant provided notice to Opportunity Living that she would be quitting in two weeks. The claimant cited ongoing issues with her lungs. The claimant sent her notice by text message. The claimant also drafted a letter to the employer, but did not provide the letter to the employer. The claimant did not consult with a doctor when making her decision to leave the Opportunity Living employment. On October 23, 2020, the claimant received a letter from the employer in which the employer accepted her resignation and indicated October 21, 2020 as the last day in the employment.

On July 13, 2021, Iowa Workforce Development mailed the July 13, 2021, reference 01, decision to the claimant's last-known address of record. The decision disqualified the claimant for benefits. The decision stated that the decision would become final unless an appeal was postmarked by July 23, 2021. The claimant resides in Lytton, Iowa, at town with few than 400 residents. The claimant ordinarily has to travel to the Lytton post office to collect her mail from her assigned box. In July 2021, the claimant experienced difficulties in receiving her mail in a timely manner because the postal carrier was leaving her mail in Livermore, Iowa, rather than delivering the mail to Lytton. The postal clerk Livermore kept rejecting the mail, but the postal carrier continued to deliver the mail to Livermore. The issue was not resolved until July 27, 2021. The reference 01 decision was delivered to the claimant's post office box after July 27, 2021. On August 4, 2021, the claimant faxed her appeal to the Appeals Bureau. The Appeals Bureau received the appeal that same day.

REASONING AND CONCLUSIONS OF LAW:

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 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. 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 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. 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.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The claimant's appeal was filed on August 4, 2021.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. IDJS*, 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. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

There is good cause to treat the August 4, 2021 late appeal as a timely appeal. The claimant did not receive the decision until after July 27, 2021 and therefore did not have a reasonable opportunity to file an appeal by the July 23, 2021 deadline. The claimant did not unreasonably delay filing the appeal. The delay in filing the appeal was attributable to the United States Postal Service delaying delivery of the decision. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to enter a decision on the merits of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning 10 times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage

credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See Iowa Admin. Code r 871-24.27.

The evidence in the record establishes a voluntary quit from part-time supplemental employment without good cause attributable to the employer that was effective October 21, 2021. The claimant's quit was due to a non-work related health issue. The quit was not based on advice from a licensed and practicing physician. The claimant is disqualified for benefits based on base period wages from this employment until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. This employer's account will not be charged for benefits. The claimant remains eligible for benefits based on other base period employment, provided she meets all other eligibility requirements. The matter will be remanded to the Benefits Bureau for determination of whether the claimant is meets the earning requirements to be eligible for reduced benefits.

DECISION:

The claimant's appeal from the July 13, 2021, reference 01, decision was timely. The reference 01 decision is modified in favor of the claimant as follows. The claimant voluntary quit part-time supplemental employment without good cause attributable to the employer effective October 21, 2021. The claimant is disqualified for benefits based on base period wages from this employment until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. This employer's account will not be charged for benefits. The claimant remains eligible for benefits based on other base period employment, provided she meets all other eligibility requirements.

REMAND:

The matter is **remanded** to the Benefits Bureau for determination of whether the claimant meets the earning requirements to be eligible for reduced benefits.

The matter is **remanded** to the Benefits Bureau for determination of whether the claimant has been able to work and available for work since she established her original claim.



James E. Timberland
Administrative Law Judge

November 29, 2021
Decision Dated and Mailed

jet/kmj

Note to Claimant: Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.