

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EMILY FOBIAN**  
Claimant

**APPEAL 21A-UI-21119-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMPREHENSIVE SYSTEMS INC**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (5)**

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Iowa Code § 96.2(A) - Discharge for Misconduct  
Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Admin. Code r. 871-24.25(37) - VQ - Resignation Accepted  
Iowa Code § 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

On September 22, 2021, claimant/appellant, Emily Fobian, filed an appeal from the October 28, 2020, (reference 02) unemployment insurance decision that concluded she was not eligible for unemployment insurance benefits due to her voluntary quit on April 3, 2020 for personal reasons. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 14, 2021. The claimant participated. The employer, Comprehensive Systems Inc, participated through Sheryl Heyegna. Judicial notice was taken of the administrative file and the records contained therein. Claimant updated her address by removing the Cedar Falls address and adding the Tucson address. Claimant is encouraged to call 1-866-239-0843 to report and update her address within the IWD systems.

**ISSUES:**

Is claimant's appeal timely?  
Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a direct support staff with a set schedule, starting June 7, 2019, with her last day worked being July 22, 2020. Claimant switched from a set schedule to an on call schedule (becoming a TRN on call), wherein employer would call claimant if there was any work and claimant would either accept or decline the assignment. Claimant submitted a letter of resignation on July 31, 2019, with her separation date being August 14, 2020. Claimant stopped accepting on call assignments until August 14, 2020 separation date.

Claimant was residing at the 1904 Campus Street, Cedar Falls Iowa 50613-3517 address when the October 28, 2020 decision was mailed to this address. Claimant never received this decision.

## REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines the untimeliness is excusable.

Iowa Code § 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. 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).

Appellant states she never received the decision in this matter. Appellant's delay was due to delay or other action of the United States Postal Service. Claimant's appeal was not filed on time but good cause has been established for the lateness of the appeal. Therefore, the appeal is deemed timely.

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit by submitting her resignation, which was accepted.

Iowa Admin. Code r. 871-24.25(37) provides:

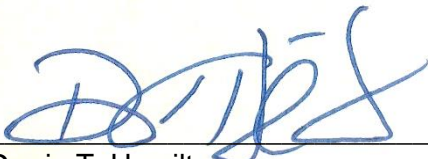
Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified 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:

(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.

Claimant submitted her resignation, which employer accepted and allowed her to work her final two weeks, but claimant did not accept any on call assignments from her last day worked.

**DECISION:**

Claimant's appeal is deemed timely. The October 28, 2020, (reference 02) unemployment insurance decision is **AFFIRMED**. Claimant voluntarily quit their employment without good cause attributable to their employer. The separation date is **MODIFIED** from April 3, 2020 to August 14, 2020. Claimant was still employed with employer during the April 3, 2020 to August 14, 2020 period. Benefits are withheld until such time as they have worked in and been paid wages for insured work equal to ten times their weekly benefit amount, provided they are otherwise eligible.



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Darrin T. Hamilton  
Administrative Law Judge

January 7, 2022

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Decision Dated and Mailed

dh/abd