

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROXANNE M MCKEAG
Claimant

ALORICA INC
Employer

APPEAL 20A-UI-02343-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/09/20
Claimant: Appellant (1R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(11) – Incarceration
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 6, 2020 (reference 01) unemployment insurance decision that denied benefits to the claimant based upon her voluntarily quitting work. The parties were properly notified of the hearing scheduled for April 1, 2020. That hearing date was rescheduled by the Appeals Bureau due to the COVID 19 pandemic. A hearing notice was mailed to both parties for April 28, 2020 at 1:00 p.m. Claimant requested a postponement of the hearing and it was granted. A hearing notice was mailed to both parties for May 15, 2020 at 1:00 p.m. The employer requested a postponement and it was granted. A hearing notice was mailed to both parties for June 8, 2020 because the claimant instructed Iowa Workforce Development that she would not be available for a hearing from May 25, 2020 through June 5, 2020.

A telephone hearing was held on June 8, 2020. The claimant, Roxanne M. McKeag, participated personally. The employer, Alorica Inc., was represented by Kathleen Travers and participated through witnesses Turkessa Newsone and Melissa Villalpando. The claimant made a verbal motion to postpone the hearing stating that she did not receive the most recent hearing notice in the mail and that her witness was unavailable for the hearing. The claimant had not updated her mailing address with Iowa Workforce Development. No witness subpoena had been requested by the claimant. The claimant's motion for postponement was denied. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the appeal timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits?
Is the claimant overpaid Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on March 6, 2020. The claimant received the decision in the mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 16, 2020. The claimant filed her appeal on March 17, 2020. The claimant filed the appeal after the deadline because she did not receive the decision in the mail until March 17, 2020.

Claimant was employed full-time as a customer service representative. She began her employment on August 24, 2005 and her employment ended on February 6, 2020. Ashley Callow was her immediate supervisor.

The employer has a written policy in place which states that three consecutive no call no shows can be considered a voluntary resignation. Claimant had access to the policy each date at work through the employer's computer system. The employer also has a written policy requiring employees to call a hotline and notify the employer of their absence from work each day within at least two hours after the start of their scheduled shift. The hotline is answered from 6:00 a.m. to 6:00 p.m. each day and employees are able to leave a voicemail message outside those hours. Claimant was aware of these policies.

Claimant was arrested and incarcerated from January 29, 2020 through February 7, 2020. Claimant was arrested for obstruction and pled guilty to the charge. During her incarceration she was able to speak to her daughter. Her daughter agreed to contact the employer for her. Claimant's daughter called the employer on January 29, 2020 using the hotline and left a message that the claimant was on FMLA. Claimant did have intermittent FMLA approval. No other calls were made to the employer by the claimant's daughter. Claimant was a no-call no-show to her shifts on January 30, February 2, February 3, February 4, February 5, and February 6, 2020. When a co-worker reported to management that the claimant was incarcerated, Ms. Newsone reviewed online records and confirmed that the claimant was incarcerated and not out on FMLA. She considered the claimant terminated for her three consecutive no-call no-shows in violation of the employer's written policy.

Claimant's administrative records establish that she has received unemployment insurance benefits of \$4,592.00 from February 9, 2020 through May 30, 2020. Claimant has also received Federal Pandemic Unemployment Compensation benefits in addition to regular unemployment insurance benefits in the amount of \$5,400.00 from March 29, 2020 through May 30, 2020.

Claimant reported to Iowa Workforce Development that she could not participate in this appeal hearing between May 25, 2020 and June 5, 2020 due to her being out of town. Claimant filed weekly-continued claims for benefits during the weeks ending May 30, 2020 and June 6, 2020. The issue of whether the claimant was available and able to work during those two weeks will be remanded to the Investigations and Recovery Unit of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

(emphasis added).

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows 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. 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. *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). 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As such, the appeal shall be considered timely.

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.

Iowa Code section 96.5(11)a provides:

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

11. *Incarceration – disqualified.*

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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 Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In this case, claimant was incarcerated and was therefore absent from work for three consecutive no-call no-shows in violation of the employer's written policy. Her daughter notified

the employer for her first day missed from work that she was on FMLA when in fact she was actually incarcerated. Claimant pled guilty to the charges that led to her incarceration.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant's voluntary quitting was not for a good-cause reason attributable to the employer according to Iowa law and the claimant failed to comply with Iowa Code § 96.5(11). Benefits are denied. Because benefits are denied, the issues of overpayment of benefits must be addressed.

Iowa Code § 96.3(7)a provides:

7. Recovery of overpayment of benefits.

a. 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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. The claimant is overpaid benefits and is obligated to repay to the agency the regular unemployment insurance benefits she received, \$4,592.00 from February 9, 2020 through May 30, 2020.

The next issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation benefits. The administrative law judge finds that she is.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as “Federal Pandemic Unemployment Compensation”).

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular benefits claimant received, the claimant also received an additional \$5,400.00 in Federal Pandemic Unemployment Compensation benefits from March 29, 2020 through May 30, 2020. Claimant is overpaid and required to repay those benefits as well.

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently 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>.

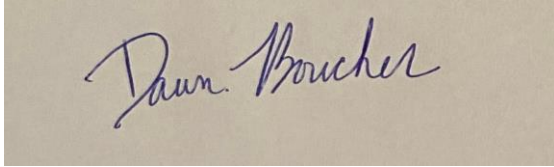
DECISION:

The claimant's appeal shall be considered timely. The March 6, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible. The claimant has been overpaid regular unemployment insurance benefits of \$4,592.00 for the weeks between February 9, 2020 and May 30, 2020 and is obligated to repay the agency those benefits. The claimant has also been overpaid Federal Pandemic Unemployment Compensation benefits in addition to regular unemployment insurance benefits. Claimant is overpaid \$5,400.00 in Federal Pandemic Unemployment Compensation benefits between March 29, 2020 and May 30, 2020 and is obligated to repay the agency those benefits as well.

REMAND:

The issue of whether the claimant was able to and available for work during the weeks ending May 30, 2020 and June 6, 2020 in which she filed weekly-continued claims for benefits is

remanded to the Investigations & Recovery Unit of Iowa Workforce Development for an initial investigation and determination.

A rectangular area containing a handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

June 12, 2020
Decision Dated and Mailed

db/sam