

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICKIE L RILEY
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 21A-UI-14415-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2R)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.5(2)A – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Vickie L Railey, the claimant/appellant, filed an appeal from the March 30, 2021, (reference 02) unemployment insurance decision that denied REGULAR unemployment insurance benefits based on a voluntary quit. Iowa Workforce Development mailed a notice of hearing to the parties' last known addresses of record. A telephone hearing was held on August 18, 2021. Ms. Railey participated and testified. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Railey's appeal filed on time?
Did Ms. Railey voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Railey at the correct address on March 30, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by April 9, 2021. Ms. Railey did not receive the decision.

IWD issued a different decision, dated June 15, 2021, that also denied benefits. Ms. Railey received that decision in the mail. On June 23, 2021, Ms. Railey called IWD and the representative told her that she could appeal the decision. Ms. Railey filed an appeal online on June 23, 2021. The appeal was received by Iowa Workforce Development on June 23, 2021.

The administrative law judge further finds that Ms. Railey began working for the employer in November 2020. She worked as a full-time kitchen associate.

In December 2020, Ms. Railey went on medical leave due to her having surgery. After surgery, Ms. Railey's doctor restricted her from lifting more than five pounds, and did not release her to

return to work. In January 2021, Ms. Railey had another surgery. Again, her doctor restricted her from lifting more than five pounds, and did not release her to return to work. Ms. Railey told the employer about each surgery and provided documents from her doctor to the employer about the surgery and her work restrictions. The employer's medical leave provider told Ms. Railey to let them know when her doctor releases her to return to work. Ms. Railey's doctor has not yet released her to return to work. Ms. Railey still has the employer's key and access codes and the employer has not told Ms. Railey that her employment has been terminated.

The issue of whether Ms. Railey is able to and available for work as of December 2020 has not been investigated by the Benefits Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the Ms. Railey's appeal was filed on time.

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).

Ms. Railey did not receive the March 30, 2021 decision in the mail and, therefore, could not have filed an appeal before to the appeal deadline. The notice provision of the decision was invalid. When Ms. Railey received the June 15, 2021 decision telling her she was not eligible for benefits, she filed a timely appeal. Ms. Railey's delay was due to delay or other action of the United States Postal Service. Ms. Railey's appeal was filed on time.

The administrative law judge further concludes that Ms. Railey did not quit; she is still employed with the employer.

Iowa Code section 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 Admin. Code r. 871-24.25 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.

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). The 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).

Ms. Railey has not been separated from employment with this employer. She did not quit, and the employer has not laid her off or terminated her employment. Benefits are allowed, provided she is otherwise eligible.

DECISION:

Ms. Railey's appeal was filed on time. The March 30, 2021, (reference 02) decision is reversed. Ms. Railey did not quit, and the employer has not laid her off or terminated her employment. Benefits are allowed, provided she is otherwise eligible

REMAND:

The issue of whether Ms. Railey is able to and available for work as of December 2020 is remanded (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
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August 23, 2021
Decision Dated and Mailed

dz/mh