

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BISHNU M GURUNG

Claimant

APPEAL 21A-UI-22567-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**

Employer

OC: 05/03/20

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Bishnu M. Gurung, filed an appeal from the December 8, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Prairie Meadows Racetrack & Casino, for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on December 6, 2021, and was consolidated with the hearing for appeal numbers 21A-UI-22568-AR-T and 21A-UI-22569-AR-T. The claimant participated personally. The employer participated through Pam Anderson. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a table games dealer from February 9, 2015, until this employment ended on June 23, 2020, when she resigned.

At the onset of the COVID-19 pandemic, the employer shut down pursuant to the governor's emergency proclamations. Claimant's last day worked was March 15, 2020, after which time she was not working due to the employer's closure.

On June 23, 2020, claimant's supervisor called her to offer her employment. By that time, claimant was aware she was pregnant. She also had fears regarding COVID-19. Though the employer discussed its COVID-19 mitigation measures with claimant, she refused to return to work, and resigned her employment effective immediately.

A disqualification decision was mailed to claimant's last known address of record on December 8, 2020. Claimant does not recall receiving that decision. Claimant submitted an appeal in

response to later overpayment decisions she received, though her appeal of those decisions was submitted a day after the deadline noted on the decision. Claimant testified that she received the overpayment decisions within 10 days of the mailing date, but did not call Iowa Workforce Development for clarification and instructions until the date of the deadline to appeal—October 11, 2021. She submitted her appeal in each of these matters on October 12, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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. *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).

Here, though claimant did not receive the original disqualification decision in the mail, she did not articulate a justifiable reason for her delay in appealing the later overpayment decisions. She received those decisions within 10 days of their mailing and, therefore, did have an opportunity to appeal the overpayment decisions timely. The reason for her delay in appealing those decisions is unreasonable and not attributable to delay or mistake by the Agency or the postal service. Claimant's appeal is untimely.

However, even if claimant's appeal was timely filed, the administrative law judge would conclude that claimant voluntarily quit employment without good cause attributable to 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. 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.

Claimant left the employment due to pregnancy, but not based on the advice of her physician. Additionally, she did not return to the employer upon recovery to offer her services, nor was she refused a return to work by the employer. She has not fulfilled the above-noted requirements in order to qualify for benefits. Claimant voluntarily quit employment without good cause attributable to the employer.

DECISION:

The December 8, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Even if the evidence in the record established that the appeal was timely filed, it also established that claimant voluntarily quit employment without good cause attributable to the employer. Benefits are denied.



Alexis D. Rowe
Administrative Law Judge

January 7, 2022
Decision Dated and Mailed

ar/kmj

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If 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, but who are unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.