

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIMBERLY R WILLIAMS**  
Claimant

**APPEAL 21A-UI-24237-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 07/12/20**  
**Claimant: Appellant (3)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the November 3, 2020 (reference 01) unemployment insurance decision that denied benefits finding claimant voluntarily quit her employment with West Liberty Foods on July 23, 2020 by three no-call/no-shows. The parties were properly notified of the hearing. A telephone hearing was held on December 29, 2021. Claimant participated. Employer participated through Melissa Stiffler, Human Resources Manager. Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant filed a timely appeal.  
Whether claimant's separation was a voluntary quit without good cause attributable to employer.  
Whether claimant is able to and available for work.

**FINDINGS OF FACT:**

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

The Unemployment Insurance Decision was mailed to claimant at the correct address on November 3, 2020. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 13, 2020. Claimant appealed the decision via facsimile on November 3, 2021. Claimant's appeal was received by Iowa Workforce Development on November 3, 2021.

Claimant was employed as a full-time Solo Driver from August 7, 2017 until her employment with West Liberty Foods ended on July 23, 2020.

Employer has a policy that failing to report to work for three consecutive shifts without notice (i.e. no-call/no-show) is considered a voluntary quit. Employer also has a points-based attendance policy. The policy requires employees to notify employer of an absence by calling

an attendance line. These policies are outlined in the employee handbook. Claimant received a copy of the handbook.

Claimant last performed work for employer on July 8, 2020. Claimant was excused from work by her doctor from July 9, 2020 through July 18, 2020. (Exhibit B) Claimant was next scheduled to work on July 20, 2020. On July 20, 2020, claimant was still sick so she requested paid time off. Employer approved claimant's request.

On July 21, 2020, claimant was still sick and did not have any remaining paid time off. Claimant did not report to work and did not notify employer because she assumed that she would accrue an attendance point for the absence. Accruing one more point would result in claimant exceeding the total number of points for termination under employer's attendance policy. Claimant assumed that she would be discharged and was a no-call/no-show. Employer did not discharge claimant on July 21, 2020. Claimant was a no-call/no-show for her scheduled shifts on July 22, 2020 and July 23, 2020.

On July 23, 2020, employer considered claimant to have voluntarily quit by failing to report to work without notice on July 21, 2020, July 22, 2020 and July 23, 2020. Claimant recovered from her illness on or about July 23, 2020.

Claimant filed an initial claim for unemployment insurance benefits effective July 12, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's appeal was timely.

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.

Claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant's appeal is considered timely.

The next issue to be determined is whether claimant's separation is disqualifying. For the reasons that follow, the administrative law judge concludes claimant voluntarily quit employment without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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).

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.

Generally, when an individual mistakenly believes they are discharged from employment but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LeGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. Filed June 26, 1984).

Claimant was not discharged by employer on July 21, 2020. Claimant was a no-call/no-show for three consecutive shifts in violation of employer's policy because she mistakenly assumed that she would be discharged for accruing too many attendance points. Claimant is considered to have voluntarily quit her employment with West Liberty Foods effective July 23, 2020. Claimant has not met her burden of proving good cause attributable to employer. Benefits are denied effective July 19, 2020.

The next issue to be determined is whether claimant was able to and available for work. For the reasons that follow, the administrative law judge concludes claimant was not able to work or available for work from July 12, 2020 through July 23, 2020. Benefits are denied.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1), (2) provide in pertinent part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

An individual claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was unable to work due to illness from July 12, 2020 through July 23, 2020. Accordingly, she is not eligible for unemployment insurance benefits effective July 12, 2020.

**DECISION:**

The appeal is timely. The November 3, 2020 (reference 01) unemployment insurance decision is modified in favor of respondent. Claimant was not able to and available for work from July 12, 2020 through July 23, 2020. Claimant voluntarily quit without good cause attributable to employer on July 23, 2020.

Benefits are denied effective **July 12, 2020** and until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Adrienne C. Williamson  
Administrative Law Judge  
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January 3, 2022

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Decision Dated and Mailed

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