

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BJ A CHARLSON**

Claimant

**APPEAL 22A-UI-00611-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JDB AUTO SALES INC**

Employer

**OC: 10/03/21**

**Claimant: Appellant (3)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Admin. Code r. 871-24.25(17) - VQ - Lack of Childcare  
Iowa Code § 96.4(3) - Eligibility - A&A - Able to and available for work

**STATEMENT OF THE CASE:**

On December 8, 2021, claimant, BJ Charlson, filed an appeal from the October 27, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his 09/24/21 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2022. Claimant participated in the hearing. Employer, JDB Auto Sales, Inc., participated through Sarah Kramer, human resources representative. Judicial notice was taken of the administrative file and contents.

**ISSUES:**

Is the Appeal Timely?

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed full-time as a service technician from June 1, 2021. His last day worked was approximately September 21, 2021. Claimant was separated from employment on October 1, 2021, when he voluntarily quit due to lack of childcare. Claimant admits to so quitting.

Claimant's appeal, to be timely, needed to be filed by November 8, 2021. The appeal was filed on December 8, 2021. Claimant never received the decision dated 10/27/21, reference 01 and only learned about it when he followed up on his claim, calling on 12/08/21, and then appealing the same date.

## 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 deems the appeal is 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.

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 never received the decision in the mail and therefore never had an opportunity to file an appeal prior to the appeal deadline. Appellant's delay was not due to an error or misinformation from the Department but due to delay or other action of the United States Postal Service. When claimant learned of the decision by calling IWD, he submitted his appeal electronically the same

day. Good cause reason has been established for the delay. Claimant's appeal is deemed to be timely filed.

The next issue is whether claimant's separation from the employment was 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.

Iowa Admin. Code r. 871-24.25(17) 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:

(17) The claimant left because of lack of childcare.

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). 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).

Claimant quit on October 1, 2021, regarding personal issues involving childcare. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied. Because benefits are denied, the issue of whether claimant was able and available for work is moot.

**DECISION:**

The October 27, 2021, (reference 01) unemployment insurance decision is **MODIFIED IN FAVOR OF RESPONDENT** in that the determination that claimant/appellant voluntarily quit his employment without good cause attributable to the employer/respondent is **affirmed**, the date of the quit is **modified** to October 1, 2021. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the is otherwise eligible. The issue of able and available is moot.



Darrin T. Hamilton  
Administrative Law Judge

March 31, 2022  
Decision Dated and Mailed

dh/mh