

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COURTNEY LANGER
Claimant

DIAL SILVERCREST CORP
Employer

APPEAL 20A-UI-05628-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/09/20
Claimant: APPELLANT (2)**

Iowa Code § 96.6(2) Timely Appeal
Iowa Code § 96.5(1) Voluntary Quit

STATEMENT OF THE CASE:

On June 9, 2020, the claimant filed an appeal from the March 6, 2020, (reference 02) unemployment insurance decision that denied benefits based on voluntary quit without good cause. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2020. Claimant participated. Employer did not participate.

ISSUES:

Did the claimant file a timely appeal?
Did the claimant voluntarily quit without good cause attributable to her employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in March 2018. Claimant last worked as a part-time resident specialist. Claimant was separated from employment on November, 2019, when resigned. Claimant gave her employer two weeks' notice she was resigning on November 18, 2019. Claimant obtained a job with the University of Iowa Hospital and Clinics (UIHC). Claimant's new position at UIHC was a better position for claimant. The position provided greater flexibility while she was going to nursing school and greater learning opportunities. Claimant left, due to personal reasons on November 26, 2019. Claimant started her employment with UIHC on December 2, 2019. Claimant worked for UIHC until February 9, 2020.

Claimant applied for unemployment and received a decision denying her unemployment benefits in Mid-March 2020. Claimant called Iowa Workforce Development and spoke to a representative. Claimant was told she was eligible and should be receiving unemployment benefits. When the unemployment benefits did not arrive claimant contacted Iowa Workforce Development and was told she was not eligible. Claimant appealed the denial on the day of her second call, June 9, 2020.

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 determines it is. 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.

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. 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).

Due process principles apply in the context of appeal hearings for persons seeking unemployment benefits. *Silva v. Employment Appeal Board*, 547 N.W.2d 232 (Iowa App. 1996). Two of the benchmarks of due process are adequate notice and meaningful opportunity to be heard. The claimant was not afforded due process rights. While the claimant was literally provided the decision, as she was incorrectly told she was eligible by an Iowa Workforce Development

representative. Once claimant was told she was not eligible she appealed on that day. Accordingly, the claimant's appeal is accepted as timely.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

The claimant resigned her employment to obtain better work and claimant did work for new and better employment. I find claimant voluntary quit employment with good cause. The account of the employer shall not be charged.

DECISION:

The March 6, 2020, (reference 02) unemployment insurance decision that denied benefits is reversed. Claimant is eligible for unemployment benefits, provided she is otherwise eligible.



James F. Elliott
Administrative Law Judge

July 9, 2020
Decision Dated and Mailed

je/scn