

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**CANDIDA H HEATON**  
Claimant

**APPEAL NO. 18A-UI-06234-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G M R I INC**  
Employer

**OC: 05/06/18**  
**Claimant: Appellant (4R)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Admin. Code r 871-24.27 – Voluntary Quit of Part-time Employment  
Iowa Code Section 96.5(1)(g) – Requalification  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Candida Heaton filed an appeal from the May 23, 2018, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Heaton voluntarily quit on September 23, 2017 to relocate to a new locality. After due notice was issued, a hearing was held on June 22, 2018. Ms. Heaton participated. Angela Guzman represented the employer. The administrative law judge took official notice of the Agency's Report on Determination of Combined Wage Claim, which report includes the claimant's wages from Tennessee employment. The administrative law judge took official notice of the Agency's administrative record of Ms. Heaton's base period wages (WAGE-A). Exhibits A and B and Department Exhibits D-1 through D-4 were received into evidence.

**ISSUES:**

Whether there is good cause to treat Ms. Heaton's late appeal as a timely appeal.

Whether Ms. Heaton's voluntary quit was for good cause attributable to the employer.

Whether the quit was from part-time employment.

Whether Ms. Heaton requalified for unemployment insurance benefits subsequent to her separation from GMRI and prior to establishing the unemployment insurance claim that was effective May 6, 2018.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 23, 2018, Iowa Workforce Development mailed a copy of the May 23, 2018, reference 02, decision to Candida Heaton at her last known address of record. Ms. Heaton's last-known address of record is in Tennessee. The May 23, 2018, reference 02, decision disqualified Ms. Heaton for benefits and relieved the employer account of GMRI, Inc. of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Heaton voluntarily quit her

employment with GMRI on September 23, 2017 without good cause attributable to the employer to relocate to a new locality. The May 23, 2018, reference 02, decision stated that an appeal from the decision must be postmarked by June 2, 2018 or be received by the Appeal Section by that date. Ms. Heaton did not receive the decision that was mailed to her on May 23, 2018. Ms. Heaton learned about the decision on June 5, 2018 and electronically submitted an appeal from the decision that same day. The Appeals Bureau received Ms. Heaton's appeal on June 5, 2018.

Ms. Heaton was employed by GMRI, Inc., d/b/a Longhorn Steak House, as a part-time server from June 2017 until September 23, 2017, when she voluntarily quit the part-time employment to relocate to Tennessee with her fiancé. The employer continued to have work for Ms. Heaton at the time she separated from the employment. After Ms. Heaton relocated to Tennessee, she worked in additional employment. The State of Tennessee reported to Iowa Workforce Development that the Tennessee wages paid for the fourth quarter of 2017 totaled \$4,162.02.

Ms. Heaton established an Iowa combined wage claim that was effective May 6, 2018. Iowa Workforce Development set Ms. Heaton's weekly benefit amount at \$426.00. Ms. Heaton's base period for purposes of the combined wage claim consists of the four calendar quarters of 2017. Ms. Heaton's base period wages include substantial wages from base period employer's other than GMRI, Inc.

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

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The evidence establishes good cause to treat the late appeal as a timely appeal. The evidence in the record establishes that Ms. Heaton did not have a reasonable opportunity to file an appeal from the May 23, 2018, reference 02, decision by the June 2, 2018 because she did not receive the decision. Ms. Heaton learned of the decision on June 5, 2018 and electronically filed her appeal the same day. The delay in filing the appeal was attributable to the United States Postal Service not delivering the decision to Ms. Heaton. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to rule on the merits of the appeal.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Admin. Code r. 871-24.25(2) 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:

(2) The claimant moved to a different locality.

The evidence in the record establishes that Ms. Heaton voluntarily quit the part-time employment on September 23, 2017 to relocate to Tennessee with her fiancé. The quit was without good cause attributable to the employer. The employer account of GMRI, Inc. shall not be charged for benefits paid to Ms. Heaton.

Iowa Administrative Code rule 871-24.27 provides as follows:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause [from] part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Because Ms. Heaton's voluntary quit from the part-time employment with GMRI, Inc. was without good cause attributable to that employer, the wage credits from that employment will be removed from her claim until she has worked in and been paid wages equal to 10 times her weekly benefit amount following her separation from the employment. However, in the meantime, Ms. Heaton remains eligible for reduced benefits based on her base period wages from employers other than GMRI, Inc., provided she meets the monetary eligibility requirement and meets all other eligibility requirements.

Iowa Code section 96.5(1)g provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The only Tennessee wages reported to Iowa so far are the \$4,162.02 in wages paid to Ms. Heaton for the fourth quarter of 2017. That amount falls short of the \$4,260.00 in wages that Ms. Heaton needed to "requalify" for benefits in connection with the May 6, 2018 Iowa original claim. This matter will be remanded to the Benefits Bureau for determination of whether

Ms. Heaton had additional Tennessee wages during the first quarter of 2018 that, when combined with the \$4,162.02 in Tennessee wages from the fourth quarter of 2017, would satisfy the requalification requirement. In the event Ms. Heaton has not met the 10-times earning requirement, the remand should include determination of whether Ms. Heaton is monetarily eligible for reduced benefits and, if so, determination of the reduced benefit amount based on base period wage credits other than the wage credits from GMRI, Inc.

**DECISION:**

The May 23, 2018, reference 02, decision is modified as follows. The claimant's appeal from the decision was timely. The claimant voluntarily quit effective September 23, 2017 without good cause attributable to the employer. The employer's account shall not be charged. The claimant had not requalified for benefits as of December 31, 2017. Because the voluntary quit was from part-time employment, the claimant remains eligible for reduced benefits based on base period wage credits from employers other than GMRI, Inc. provided she meets the monetary eligibility requirement and meets all other eligibility requirements. The wage credits from the GMRI, Inc. employment will be removed from the claim until the claimant has met the requalification requirement. The GMRI, Inc. wages will then be transferred to the balancing account.

This matter remanded to the Benefits Bureau for determination of whether the claimant had additional Tennessee wages during the first quarter of 2018 that, when combined with the \$4,162.02 in Tennessee wages from the fourth quarter of 2017, would satisfy the requalification requirement. In the event the claimant has not met the 10-times earning requirement, the remand should include determination of whether the claimant is monetarily eligible for reduced benefits and, if so, determination of the reduced benefit amount based on base period wage credits other than the wage credits from GMRI, Inc.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs