

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RIZAN A TORHALA
Claimant

PREMIER STAFFING INC
Employer

APPEAL 24A-UI-00020-DZ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/12/23
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Rizan Torhala, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) December 6, 2023 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Torhala REGULAR (state) UI benefits because IWD concluded she voluntarily quit on August 18, 2023 and she did not give IWD evidence showing she had a good reason to quit. On January 4, 2024, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Torhala and the employer for a telephone hearing scheduled for January 18, 2024.

The undersigned administrative law judge held a telephone hearing on January 18, 2024. The administrative law judge heard Appeals 24A-UI-00020-DZ-T and 24A-UI-00021-DZ-T together and created one hearing record. Ms. Torhala participated in the hearing personally. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Did Ms. Torhala appeal on time?

Did Ms. Torhala voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the December 6, 2023 (reference 01) UI decision to Ms. Torhala at her correct address. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Saturday, December 16, 2023. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, December 18, 2023.

On December 7, 2023, IWD mailed Ms. Torhala another UI decision. In this reference 03 decision, IWD denied Ms. Torhala REGULAR (state) UI benefits as of December 3, 2023

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

because IWD concluded that IWD mailed her a notice to report to IWD for an appointment, but she did not do so. The appeal deadline in this decision was Sunday, December 17, 2023. The appeal deadline was extended to Monday, December 18, 2023.

Ms. Torhala did not receive either decision in the mail. Ms. Torhala called IWD on December 29 because she had not received any UI benefits. The IWD representative told Ms. Torhala that her UI claim was locked because of the December 6, 2023 (reference 01) decision, and that she could appeal. Ms. Torhala appealed online on Friday, December 29, 2023. The DIAL UI Appeals Bureau received the appeal the same day.

The administrative law judge further finds: Ms. Torhala began working for the employer, Premier Staffing Inc (Premier) in March 2023. She was assigned to work at employer Evelyn K. Davis Center (EKDC) as a part-time youth program specialist.

In August, EKDC staff told Ms. Torhala that her position would end soon because EKDC did not have the funds to keep her employed. Ms. Torhala's employment ended with EKDC on August 18. Premier never told Ms. Torhala that she needed to contact Premier when her assignment ended at EKDC. Ms. Torhala did not contact Premier after her EKDC assignment ended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Torhala appealed the December 6, 2023 (reference 01) UI decision on time, and she is eligible for UI benefits, as long as no other decision denies her UI benefits, because her separation from employment with Premier was with good cause attributable to the employer.

Ms. Torhala Appealed on Time

Iowa Code § 96.6(2) provides, in relevant 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:

2. 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:
 - (2) 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.² Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.³

Ms. Torhala did not receive the December 6, 2023 (reference 01) UI decision before the appeal deadline and, therefore, could not have appealed by the deadline. The notice provision of the decision was invalid. Ms. Torhala appealed the same day she learned there was an issue with her UI claim. Ms. Torhala appealed on time.

Ms. Torhala is Eligible for UI benefits Based on How Her Job Ended with Premier

Iowa Code section 96.5(1)j 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.

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from

² *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *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).

any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The language of the statute allows benefits for a claimant who notifies the temporary employment firm of completion of an assignment and who seeks reassignment.

Iowa Admin. Code r. 871-24.26(15) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

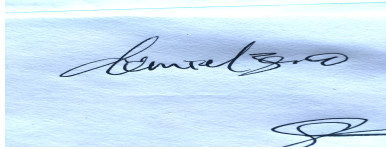
d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

In this case, Ms. Torhala's EKDC assignment ended due to EKDC's budget. Ms. Torhala did not notify the employer – Premier – of her availability or request another assignment within three

days of the end of her EKDC assignment because the employer did not tell her about the requirement. Ms. Torhala is eligible for UI benefits.

DECISION:

Ms. Torhala appealed the December 6, 2023 (reference 01) UI decision on time. The December 6, 2023 (reference 01) UI decision is REVERSED. Ms. Torhala's separation from employment with the employer – Premier – was with good cause attributable to the employer. Ms. Torhala is eligible for UI benefits, as long as no other decision denies her UI benefits.

A handwritten signature in black ink on a light blue background. The signature appears to read "Daniel Zeno" and is written in a cursive style.

Daniel Zeno
Administrative Law Judge

January 22, 2024
Decision Dated and Mailed

DZ/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.