

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RIGBE GEBRESILASIE**

Claimant

**APPEAL 21A-UI-21671-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEABOARD TRIUMPH FOODS LLC**

Employer

**OC: 05/10/20**

**Claimant: Appellant (1R)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 9, 2020, (reference 02) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2021, and was consolidated with the hearing for appeals 21A-UI-21672-S2-T and 21A-UI-21673-S2-T. Claimant Rigbe Gebresilasie participated and testified through a Tigrinya interpreter with CTS Language Link. Employer Seaboard Triumph Foods, LLC did not register for the hearing and did not participate. Department's Exhibit D-1 was received.

**ISSUES:**

Is claimant's appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a cleaner in the hot area from February 2020, until June 10, 2020, when she quit.

She returned to work on June 1, 2020. On or around June 7, 2020, claimant submitted her written resignation to employer. Employer had claimant fill out paperwork indicating why she was leaving her employment. Claimant noted she was leaving to go back to school and study. Claimant also left her employment because she obtained a new job with Smithfield Meats. Her last day working with this employer was on June 10, 2020. She began her new position on June 12, 2020. Claimant remains employed at Smithfield Meats.

Claimant filed her initial claim for benefits effective May 10, 2020, because she was out of work due to an underlying health condition which made her high risk for contracting COVID-19. She filed weekly claims for the two weeks ending May 23, 2020. The issue of whether claimant was

able to and available for work effective May 10, 2020, has not been the subject of an investigation or determination by the Benefits Bureau.

A disqualification decision was mailed to claimant's last known address of record on July 9, 2020. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 19, 2020. The appeal was not filed until September 28, 2021, which is after the date noticed on the disqualification decision. Claimant did not receive the decision in the mail. The first notice of disqualification was the receipt of an overpayment decision dated December 29, 2020. The IWD appealed the underlying decision for claimant when claimant submitted an appeal of the December 29, 2020, decision.

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

The first issue is whether claimant's appeal is timely. For the reasons that follow, the administrative law judge concludes it is.

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, subsection 10, 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 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. 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. 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant filed an appeal within a reasonable period of time after discovering the overpayment. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant's separation from the employment was disqualifying. For the reasons that follow, the administrative law judge concludes claimant's separation it is.

Iowa Code section 96.5(1)a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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. 871-23.43(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.

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 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:

(26) The claimant left to go to school.

Here, claimant did not leave her employment for the sole reason of accepting another offer of employment. While that was one of the reasons, it was not the sole reason. Further, claimant remains employed at that job and has not since been separated from it. Claimant also left her employment to go to school. She has failed to establish her leaving was for good cause. 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.

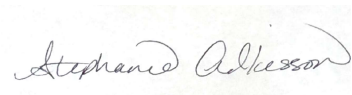
The issue of whether claimant is able to and available work for the two-week period ending May 23, 2020, shall be remanded to the Benefits Bureau for an infestation and decision.

**DECISION:**

The appeal is timely. The July 9, 2020, (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

**REMAND:**

The issue of whether claimant is able to and available work for the two-week period ending May 23, 2020, is remanded to the Benefits Bureau for an investigation and decision.



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Stephanie Adkisson  
Administrative Law Judge  
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December 30, 2021

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Decision Dated and Mailed

sa/kmj