

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HANNAH C BROWN
Claimant

NORDSTROM INC
Employer

APPEAL 21A-UI-19772-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Hannah Brown, filed an appeal from the October 13, 2020 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on December 1, 2021. The hearing was held together with Appeals 21A-UI-19773-JC-T, 21A-UI-19774-JC-T, 21A-UI-19775-JC-T, and 21A-UI-19776-JC-T. The claimant participated personally. The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of March 15, 2020.

Claimant performed work for this employer as a full-time, seasonal customer service representative from fall 2019 until December 6, 2019, when she quit the employment. Continuing work was available.

In May 2019, prior to employment, claimant requested and was granted a no-contact order. Claimant began employment with this employer. Shortly after, claimant learned that the person who was not to have contact with her, had also been hired. (His friends saw claimant during a break at work and told her.) Claimant notified employer and presented a copy of the no-contact order. Claimant and the other person were suspended pending investigation, as both employees could not work in the facility without possible contact. The other employee was separated from this employer on December 2, 2019. Claimant returned to employment.

Claimant was directed by the employer to notify it if he continued to contact her. He and his girlfriend did contact the claimant via social media repeatedly about his firing being her fault. Claimant notified employer as directed of the contact. Employer management responded by referencing claimant having "drama" and told claimant if he showed up to the employer premises, it may be claimant's fault, that she could be sued or even fired. Claimant was fearful and upset that she may be held responsible for his actions, for which she had no control over. Claimant subsequently quit the employment.

An initial decision dated October 13, 2020 (reference 03) denying benefits to claimant was mailed to her address of record. The decision contained a warning that an appeal was due by October 23, 2020. Claimant did not receive the message. Claimant's first knowledge of the decision came through the August 31, 2021 overpayment decision she received. Claimant timely appealed the overpayment decision on September 7, 2021. (See Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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 claimant did not have an opportunity to appeal the initial 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). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. "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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The administrative law judge recognizes an employer has a responsibility to protect the safety of its employees, from potentially unsafe, or threatening conduct in the workplace, in an era where violence in the workplace is real. The undisputed evidence in this case is that the claimant notified the employer of a no-contact order that was in place after the employer hired the person listed within the no-contact order. After separating that employee, claimant returned to employer per its directive to alert of additional contact. Employer management responded by being insensitive, and threatening claimant of possible firing, liability and responsibility if he

returned to the premises. Claimant had no such control over the person and was understandably upset by the employer's response to her possible safety. The administrative law judge concludes that a reasonable person would quit under these circumstances. Good cause attributable to the employer has been established. The claimant is allowed benefits, provided she is otherwise eligible.

DECISION:

The October 13, 2020 (Reference 03) initial decision is REVERSED. The appeal is accepted as timely. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

January 5, 2022
Decision Dated and Mailed

jlb/mh