

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANGELICA LOPEZ**  
Claimant

**PACKERS SANITATION SERVICES INC**  
Employer

**APPEAL 16A-UI-08216-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/12/16  
Claimant: Appellant (4)**

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Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.5(1) – Voluntary Leaving

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 11, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 16, 2016. Claimant participated. Employer participated through Andrea Ramirez, ERP Coordinator. Department's exhibit D-1 was entered and received into the record.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant discharged due to job connected misconduct or did she voluntarily quit her employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an office administrator beginning on August 27, 2015 through June 10, 2016 when she was discharged.

The claimant was responsible for insuring that new and transfer employees underwent a drug test. An anonymous complaint to the employer indicated that the claimant was not making new employees go through the drug test, but was simply having them sign off on the paperwork. The claimant denied engaging in such conduct and denied that she ever admitted to anyone that had not completed the drug test. The claimant also denied forging any employee's drug testing paperwork.

The claimant had a coworker named Maria who simply would not perform her required tasks. The claimant complained to the site manager, Caesar, about Maria not taking her job seriously and doing her required job duties. Caesar did not remedy the situation. The claimant complained to Sara, the human resources manager, via e-mail but that still did not remedy the situation. The claimant was upset that she would get lists from the corporate office of

uncompleted paperwork because Maria was not performing her job duties. The claimant was not getting her own job duties done because she was busy doing the work that Maria would not do or was busy checking to see if Maria had done her job. At no time did the claimant ever forge a drug test result by indicating that a test was given when in fact it had not been given.

On May 27 the claimant told Caesar that she could no longer work with Maria and she was giving him her notice that June 24 would be her last day. The claimant did not put her notice in writing. At the time the claimant told Caesar that June 24 was going to be her last day, she had been questioned about drug testing new and transfer employees by Sarah, but had not admitted any wrong doing. The claimant quit because she could not continue to work with Maria, not because of the investigation into the drug testing of transfers or new employees.

The claimant was in the process of moving to Minnesota and did not receive the decision telling her that her benefits were denied prior to the time to file an appeal had expired. The claimant filed her appeal the day she learned of the decision denying her benefits.

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

The first issue to be considered in this appeal is whether the claimant'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 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within one days of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date.

Iowa Code § 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 Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.25(6) and (38) 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:

(6) The claimant left as a result of an inability to work with other employees.

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Claimant's decision to quit because she could not work with Maria any longer was not a good cause reason attributable to the employer for leaving the employment. She was not required to perform Maria's job, but chose to do so anyway. The claimant simply no longer wanted to work with Maria because she did not like it that Maria was failing to perform her job duties. At the time the claimant put in her notice to quit, the employer was conducting an investigation into whether new and transfer employees were actually being given pre-employment drug tests. A resignation notice is not required to be in writing in order for the employer to accept it. The employer's investigation was prompted by an anonymous complaint.

The employer's witness at hearing had no first-hand knowledge of any information she provided. She did not conduct the investigation and could not provide any details as to how the employer arrived at their conclusion that the claimant was forging drug tests. The employer submitted no documents for the hearing to support their allegation that the discharge was due to job connected misconduct. The employer has not met their burden to prove job connected misconduct as the reason for the claimant's discharge. The claimant's consistent denial of wrongdoing is more credible than the changing testimony offered by Ms. Ramirez. Because the employer has not established misconduct as the reason for the discharge, and since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation. Thus, benefits are allowed from June 12, 2016 through June 24, 2016.

**DECISION:**

The July 11, 2016, (reference 01) decision is modified in factor of the appellant. The claimant voluntarily left her employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until June 24, 2016. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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