

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RACHEL MCKERN**  
Claimant

**BAILEY INC.**  
Employer

**APPEAL 21A-UI-19638-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

**STATEMENT OF THE CASE:**

The claimant, Rachel McKern, filed an appeal from the September 29, 2020, (reference 01) 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 October 29, 2021. The hearing was held jointly with appeal 21A-UI-19640-SN-T and 21A-UI-19638-SN-T. The claimant participated and testified. The employer participated through Vice President Karen Bailey. Exhibits D-1 and D-2 were received into the record. Official notice was taken of the agency records.

**ISSUES:**

Whether the claimant's appeal is timely? Whether there are reasonable grounds to consider her appeal otherwise timely?

Was the separation a layoff, discharge for misconduct or voluntary quit without 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 was employed part-time as a restoration technician for the employer, Bailey Inc., from September 2016, until she was separated from employment on August 8, 2019, when she finished her term of employment.

The claimant began her term with the employer as a counter clerk at its dry cleaning facility until late June 2019 or early July 2019. At that time, Karen Bailey, the employer's owner, told the claimant that she could temporarily place the claimant in a cleaning role in the ServiceMaster franchise wing of the employer's operation in downtown Des Moines until August 8, 2019. Ms. Bailey thought the claimant would be unable to fulfill the duties of the cleaning role past that date due to her school schedule.

The claimant was scheduled to take 14 credit hours in the fall of 2019. The claimant would have been able to work her role despite this heavy academic load. The claimant's classes were all in the morning and were conducted online.

A disqualification decision was mailed to the claimant's address of record on September 29, 2020. The claimant did not receive the decision. (Exhibit D-1) Although the claimant did not reside at that address at the time, the claimant's parents reside there. The claimant's parents promptly inform her of mail being sent to that residence. The first notice of disqualification was the overpayment decision of August 24, 2021. The appeal was sent immediately after receipt of that decision.

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

For the reasons that follow, the administrative law judge concludes claimant's appeal has reasonable grounds to be considered otherwise timely. He further concludes the claimant's separation was attributable to the employer.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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. Without 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 timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant's separation from employment is attributable to the employer. The administrative law judge concludes the claimant's separation is attributable to the 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. 871-24.26(19) 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:

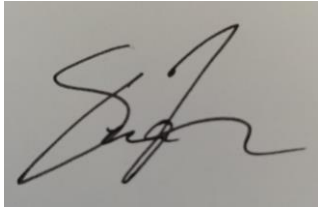
(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

Inasmuch as the claimant completed the contract of hire with employer, no disqualification is imposed.

**DECISION:**

The September 29, 2020, (reference 01) unemployment insurance decision is reversed. The claimant's appeal is otherwise timely. The claimant served her term of employment with the employer's ServiceMaster division. Benefits are granted, provided she is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

November 30, 2021  
Decision Dated and Mailed

smn/mh