

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

SANDRA A SALAZAR
Claimant

APPEAL 24A-UI-03890-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FRESH MEATS CORP
Employer

**OC: 03/03/24
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 17, 2024, claimant Sandra A. Salazar filed an appeal from the April 3, 2024 (reference 03) unemployment insurance decision that denied benefits, determining claimant voluntarily quit employment on March 1, 2024 without good cause attributable to the employer. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on April 18, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 10:00 a.m. on Thursday, May 2, 2024. Claimant Sandra A. Salazar personally participated. Spanish/English interpreter Juan (ID number 15369) with CTS Language Link interpreted for the hearing. Employer Smithfield Fresh Meats Corp. participated through Abbey Lansink, Associate Human Resource Manager. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant separate from 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: Claimant began working at Smithfield Fresh Meats Corp. (“Smithfield”) through a temp agency in August 2023. She accepted a position with Smithfield and began working for the company directly on December 5, 2023. She held a full-time position as a production worker. Claimant’s employment ended on March 1, 2024, when she quit.

The employer provided all temporary employees bussing from Sioux City to the worksite in Denison, ninety minutes away. This transportation was provided at no cost to the temporary employees. When claimant was hired on as a Smithfield employee, the employer allowed her to continue riding the bus to Denison because she did not have other transportation. She was told that she would need to look for alternate transportation, as the employer would not continue bussing her to work permanently.

In mid-January, the employer notified claimant, her niece (who was also riding the bus to work), and the temporary employees riding the bus that the bus service would be ending on March 1. Smithfield called all affected employees to the HR office for an impromptu meeting about this

issue. The employer also passed word to employees through the supervisors. The employer discontinued its bussing from Sioux City because the bus was no longer in heavy use and it had become prohibitively expensive to operate. The employer was not employing as many temporary employees from the Sioux City area, and most employees opted to drive themselves.

On February 29, 2024, only claimant and four other employees rode the bus. That day, the bus driver told them that the bussing service would be ending the next day. The following day, claimant went into the HR office and turned in her badge. She said she could no longer work for the employer because the transportation service was ending. The employer still had work available for claimant, but it no longer had transportation for her to and from Denison.

The unemployment insurance decision was mailed to claimant's address of record on April 18, 2024. Claimant did not receive the decision. Claimant lives in a neighborhood where multiple mailboxes are grouped together, and mail is often mixed up between addresses. She did not learn about the decision denying benefits until she talked to someone in the Sioux City IowaWorks office after her claim did not pay out benefits. The man at the front desk then told her that her benefits were "discontinued" and she needed to appeal. Claimant goes to the local office each Monday, and remembers that she filed her appeal the following day. Claimant's appeal was postmarked Wednesday, April 17, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant separated without good cause attributable to the employer. Benefits are withheld.

The first issue is whether claimant filed a timely appeal. The administrative law judge determines she did.

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

1. 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:

- (a) 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 parties have a duty to appeal representatives' decisions within the time allotted by statute; the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The claimant did not have an opportunity to appeal the fact-finder's decision because she did not get the decision in the mail. Because the claimant/appellant had no notice of the decision, she had no meaningful opportunity to appeal. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after the IowaWorks office staff notified her that her claim was locked and she needed to file an appeal. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant quit with good cause attributable to the employer.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in

determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dept of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(1) 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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant went to the HR office, handed in her badge, and told someone she was quitting. This event showed claimant's intent to end the employment relationship and an overt act of carrying out her intention. Claimant voluntarily quit her employment. Claimant provided only one reason for quitting her job. I have carefully analyzed that reason and determined she did not quit with good cause attributable to the employer.

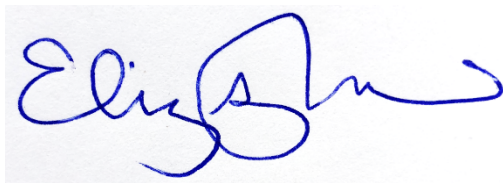
Here, claimant was provided transportation to and from work as part of her *temporary* employment. Once she became a permanent employee of Smithfield, the terms of claimant's employment changed. The employer did not provide transportation for its permanent, full-time employees. Smithfield agreed to allow claimant and her niece to ride the bus to and from work on a short-term basis, but the employer informed claimant that this would not be a long-term solution to her lack of transportation. Claimant was told when she was hired that she would need to find her own transportation to and from work, as she would not be able to ride the bus indefinitely. The employer has established that their elimination of the bussing from Sioux City to Denison was not a change in claimant's contract for hire. Instead, claimant quit her employment due to a lack of transportation. While I am sympathetic to claimant's reliance on the bussing service, the employer took multiple steps to notify employees weeks in advance so they could make alternate arrangements to get to and from work. Even if claimant did not learn about the

bussing going away until February 29, her ability to ride the bus was still a fringe benefit of her job that the employer had clearly communicated to her was temporary.

Claimant has not met her burden of proving she voluntarily quit her job at Smithfield for good cause attributable to employer. Benefits are denied.

DECISION:

The April 3, 2024 (reference 03) unemployment insurance decision is affirmed. Claimant quit the employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

May 3, 2024
Decision Dated and Mailed

lj/rvs

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:

**Iowa 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:

**Iowa 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.