

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLOW D KLEMESRUD
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL 21A-UI-13932-S2-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/28/20
Claimant: Appellant (1)

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 September 12, 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 August 16, 2021, and was consolidated with the hearing for appeal 21A-UI-13933-S2-T. Claimant Willow D. Klemesrud participated and testified. Employer Grapetree Medical Staffing participated through human resources specialist Zachary Myer. Department’s Exhibit D-1 was received.

ISSUES:

Is claimant’s appeal is 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 worked for employer as an on-call CNA. Claimant’s first day of employment was February 16, 2020. The last day claimant worked on the job was June 14, 2020. She separated from employment on June 26, 2020, when she quit her employment.

On June 3, 2020, employer sent claimant a text message offering claimant several available shifts in June and July. Claimant responded to the text message on June 11, 2020, after receiving several additional text messages from employer with available shifts. Claimant responded that she could work the shifts on the 19, 22, 27, and 29, but did not specify these dates referred to July. Employer did not have shifts available on those dates in July, so it scheduled claimant for shifts on June 19 and 22, 2020. When claimant checked her schedule, she contacted employer to explain she would be on vacation during those dates and would be unavailable for work. Employer responded that per its policy, claimant would be charged a booking fee for accepting shifts that needed to be rescheduled. Claimant responded that if she would be charged, employer should just leave her on the schedule. She reiterated she was scheduled to be on vacation during that time.

Claimant did not work her scheduled shifts on June 19 and 22, 2020. Employer contacted claimant and gave her three days after each no call/no show to respond to it. Employer did not hearing from claimant until June 26, 2020, when claimant contacted her after returning to town and receiving an email from employer ending her employment.

A disqualification decision was mailed to claimant's last known address of record on September 12, 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 September 22, 2020. The appeal was not filed until June 3, 2020, which is after the date noticed on the disqualification decision. Claimant did not receive a copy of the September 12, 2020, decision. She was no longer filing her weekly claim for benefits by that time, so she would not have been otherwise made aware she was ineligible for benefits. Claimant filed this appeal upon receiving an overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

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 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). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant's separation from the employment was without good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes it was not.

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:

(25) The claimant left to take a vacation.

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). 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).

Claimant was aware she was scheduled to work on days she would be on vacation. When she informed employer, she learned she would be required to pay a booking fee for the days she could not work, as she had accepted work on those days. Claimant did not feel she should be required to pay the fee, so she told employer to leave her on the schedule, despite knowing she would not work those shifts. Claimant's actions are evidence of her intention to sever the employment relationship and an overt act of carrying out her intention. Claimant's leaving was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The appeal is timely. The September 28, 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.



Stephanie Adkisson
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August 20, 2021
Decision Dated and Mailed

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