

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DOMINIQUE CORTEZ
Claimant

**APPEAL 20A-UI-12888-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION**

SIGNATURE HEALTHCARE LLC
Employer

**OC: 04/26/20
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On October 14, 2020, claimant filed an appeal from the September 22, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on April 27, 2020 for personal reasons.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 10, 2020 at 1:00 p.m. Claimant participated. The employer did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the claimant's appeal timely?
- II. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was January 3, 2020. Claimant currently works for the employer. The last day claimant worked on the job prior to her rehire was April 24, 2020. Claimant worked for employer as a certified nursing assistant. Claimant reported directly to Scheduler / Coordinator Kelcey (last name unknown) and Scheduler / Coordinator Matt Rodriguez.

On April 24, 2020, claimant started experiencing symptoms of a respiratory illness which prompted her to take a Covid19 polymerase chain reaction (PCR) test. On April 28, 2020, claimant received the results of her PCR test which showed she was positive for Covid-19.

After being discharged from the hospital on April 29, 2020, claimant informed Kelsey of the positive test results. Kelcey replied that claimant could return to work when she was ready. Claimant replied she would not return to work until after the delivery of her pregnancy.

On August 12, 2020, claimant delivered her baby to term. Claimant fully recovered from her pregnancy on September 12, 2020. On October 9, 2020, claimant obtained a release to return to work without restriction.

On October 12, 2020, claimant called the employer and spoke to Matt Rodriguez about obtaining past pay stubs. During that conversation, Matt Rodriguez offered claimant a position with the same duties and pay as the one she held prior to leaving on April 24, 2020. Claimant accepted the position that day.

On September 22, 2020, a representative issued a decision, reference 01, which held claimant ineligible for unemployment insurance benefits. The decision states it would become final unless an appeal was postmarked by October 2, 2020, or received by the Appeals Section on that date. The claimant's appeal was sent through Iowa Workforce Development's Unemployment Insurance Online Appeal platform on October 14, 2020.

Claimant did not receive the representative's decision at her mailing address. Claimant was first informed of her denial of benefits by a representative of the benefits department on October 14, 2020. This conversation spurred her to file her appeal that same day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the administrative law judge finds claimant's otherwise untimely appeal of the September 22, 2020 (reference 01) unemployment insurance excused. The administrative law judge affirms the decision that denied benefits based on a finding claimant voluntarily quit work on March 27, 2020 on the merits.

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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 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. 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 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The administrative law judge concludes claimant's failure have the appeal sent in within the time prescribed by the Iowa Employment Security Law was due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Claimant credibly testified she did not ever receive the September 22, 2020 (reference 01) unemployment insurance decision. With that in my decision, the analysis will continue and evaluate whether claimant voluntarily quit without good cause attributable to the employer.

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25 provides in relevant part:

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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

Iowa Admin. Code r. 871-24.26 provides in relevant part:

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:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried her burden of proving the voluntary leaving was for good cause attributable to employer.

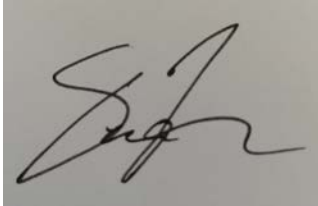
On April 29, 2020, claimant said she would not return to work for the employer until she carried her pregnancy to term. On September 12, 2020, claimant had fully recovered from the symptoms of Covid19 and her pregnancy. On October 9, 2020, claimant obtained a release to return to work without restrictions from her physician. On October 12, 2020, claimant spoke to Matt Rodriguez who offered her a job, on the spot. Given these facts, claimant fulfilled the requirements of Iowa Code section 96.5(1)d. The reason claimant is not eligible for benefits is that immediately after she satisfied the requirements of Iowa Code section 96.5(1)d the employer offered her the job she performed prior to her departure.

The administrative law judge is sympathetic to claimant's situation. While claimant's resignation based on her inability to work was not due to her own fault, neither was it for good cause attributable to employer. Had employer declined to return her to work; she may have been eligible for benefits. However, that did not occur here. The administrative law judge cannot find

claimant's quitting was for good cause attributable to employer and benefits must therefore be denied.

DECISION:

The September 22, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on March 27, 2020 for personal reasons is affirmed. Claimant is disqualified from benefits until she earns wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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

December 22, 2020
Decision Dated and Mailed

smn/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**