

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA S KRESS

Claimant

APPEAL 22A-UI-06205-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EASTERN IOWA COMMUNITY COLLEGES
DISTRICT**

Employer

OC: 10/10/21

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant, Cynthia S. Kress, appealed the November 10, 2021 (reference 01) initial decision, which denied benefits based upon her separation with this employer. After proper notice, a telephone hearing was held on April 21, 2022. Claimant participated personally. Employer/respondent, Eastern Iowa Community Colleges District, participated through Debora Sullivan, Chief Human Resources Officer. David Steen, Administrative Law Judge, attended as an observer. Department Exhibit 1 and Employer Exhibit A were admitted. Official notice was taken of the administrative record. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence and administrative records, the administrative law judge finds: Claimant worked for this employer beginning January 3, 2012 and last performed work as a full-time secretarial services assistant. Claimant voluntarily quit the employment on September 17, 2021 (Employer Exhibit A). Continuing work was available.

Claimant indicated she quit due to stress and mental health. Claimant was not advised by a treating physician to resign. Claimant stated she was unable to concentrate, complete job duties and could not perform up to her standards, leading up to separation. Claimant had previously been assigned solely to the Continuing Education (“CE”) department, but due to limited in-person classes after March 2020 with the COVID-19 pandemic, (which meant significantly less work for claimant to do) employer shifted claimant’s job duties to include assignments with the main campus, rather than lay her off due to a lack of work.

Claimant did not cite to one specific incident, person or issue that led to her decision to quit, but stated work conditions were very hard, she felt very pressured, and cited specifically to the employer asking her to write down all of her job duties, which she could not do. Claimant had no warnings for her performance being unsatisfactory leading up to quitting. She did not request a transfer, a leave of absence or take steps to preserve her employment. Claimant elected not to raise concerns with human resources or her immediate, on-site manager, prior to quitting.

An initial decision dated November 10, 2021 (reference 01) was mailed to the claimant's address of record on November 10, 2021. The initial decision contained a warning that an appeal was due by November 20, 2021. Claimant received the initial decision within the appeal period. She did not read both sides of the letter. Claimant stated she thought she filed an appeal online on November 20, 2021. Claimant did not retain a copy of the appeal. Claimant could not confirm what website she used or form she used to submit the appeal. Claimant did not follow up with IWD when she did not hear back about the appeal, because she had started another job. IWD first received an appeal from claimant on March 8, 2022 when she filed an online appeal to a reference 05 decision (for another employer) dated March 1, 2022 (See Department Exhibit 1). The appeal was also applied to this case. The administrative law judge would note the appeal does not reference this employer, or an explanation as to why it was filed late.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. Claimant stated she filed an appeal but could furnish no credible evidence of how it was submitted or proof she attempted to file a timely appeal. Claimant further stated she did not follow up on the Appeal when she received no follow up from IWD, because she had started a new job. Claimant delayed following up about the appeal until she received another unfavorable decision approximately three and a half months later, at which time she filed an appeal. Though not required, the administrative law judge would note that claimant's appeal letter made no reference to this specific employer (but rather the employer for the March 1, 2022 case), or to any attempts of trying to file an appeal sooner but it not being received.

Based on the evidence presented, the administrative law judge concludes that claimant's filing of an appeal was not within the time prescribed by the Iowa Employment Security Law, and was *not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

In the alternative, even if claimant's appeal was accepted timely, the administrative law judge would conclude claimant was disqualified from benefits because she voluntarily quit the employment without good cause attributable to the employer.

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). They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.25 provides in pertinent parts:

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:

(21) The claimant left because of dissatisfaction with the work environment.

...

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Claimant may have had personally compelling reasons to quit the employment but failed to establish she voluntarily quit with good cause attributable to the employer, according to Iowa law. Benefits would be denied under this analysis.

DECISION:

The November 10, 2021 (reference 01) initial decision is affirmed. The appeal was not timely and is dismissed. The initial decision denying benefits remains in effect.



Jennifer L. Beckman
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April 26, 2022
Decision Dated and Mailed

jlb/mh