

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA M MARSELL
Claimant

APPEAL 22A-UI-05027-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On February 21, 2022, Amanda Marsell (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 18, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant left employment voluntarily on August 19, 2019 without good cause attributable to employer.

A hearing was initially scheduled for April 5 and then for April 21, 2022. Those were rescheduled at claimant’s request. A telephone hearing was held on May 6, 2022. The parties were properly notified of the hearing. Claimant participated personally. Des Moines Ind Community Sch Dist (employer/respondent) participated by Benefits Specialist Rhonda Wagoner.

Appeals Nos. 22A-UI-05027-AD-T, 22A-UI-05032-AD-T, 22A-UI-05033-AD-T, 22A-UI-05034-AD-T, 22A-UI-05037-AD-T, and 22A-UI-05046-AD-T are related and as such a consolidated hearing was held composing one record. Claimant’s Exhibits 1-4 were admitted. The other proposed exhibits were not offered or were not admitted for the reasons stated on the record. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was there a disqualifying separation from employer?

FINDINGS OF FACT:

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

Claimant began working for employer in October 2017. Claimant last performed work for employer in June 2019. Claimant resigned in August 2019 to care for her child. Continuing work was available had claimant not resigned.

The Unemployment Insurance Decision was mailed to claimant at the above address on March 18, 2021. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 28, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

The delay in appealing was due to claimant not receiving the decision. Claimant was prompted to appeal when she received decisions in February 2022 which found she was overpaid based on the March 18, 2021 decision denying benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated March 18, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant left employment voluntarily on August 19, 2019 without good cause attributable to employer is AFFIRMED.

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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable

opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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 record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.5(1) 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.

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:

(19) The claimant left to enter self-employment.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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. While claimant had good personal reasons for resigning those reasons were not caused by employer. As such the separation from employment was disqualifying and benefits must be denied.

The administrative law judge notes that while this decision denies regular, state-funded unemployment insurance benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA and how to apply is set forth below.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The decision dated March 18, 2021 (reference 01) that denied unemployment insurance benefits based on a finding that claimant left employment voluntarily on August 19, 2019 without good cause attributable to employer is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge

May 11, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

Individuals who do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is the PIN you used for the hearing.**