IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MARY W LOVEJOY CASTANEDA Claimant **CARE INITIATIVES** Employer	**APPEAL NO. 24A-UI-05784-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/11/24** **Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On June 18, 2024, Mary Lovejoy Castaneda (claimant) filed a late appeal from the June 5, 2024 (reference 04) decision that allowed benefits for the week ending May 25, 2024, provided the claimant was otherwise eligible, but that indicated the claimant would thereafter have to earn wages from insured work equal to 10 times her weekly benefit amount and meet all other eligibility requirements to be eligible for unemployment insurance benefits. The decision was based on the IWD deputy's conclusion that the claimant voluntarily quit effective May 29, 2024 and that the employer terminated the employment early on May 20, 2024 in response to the quit notice. After due notice was issued, a hearing was held on July 3, 2024. Claimant participated. The employer did not comply with the hearing notice instructions to call the toll-free number at the time of the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following IWD administrative records: DBRO, KFFV and NMRO.

ISSUES:

Whether there is good cause to treat the late appeal as a timely appeal.
Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

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

Mary Lovejoy Castaneda (claimant) was employed by Care Initiatives as a full-time Social Services Coordinator (social worker) at Heritage Specialty Care Center from March 6, 2024 and last reported for work with the employer on May 20, 2024. On May 15, 2024, the claimant emailed a two-week quit notice to her supervisor, Tim Boseman, Administrator. In the notice, the claimant stated that she was leaving due to "stress and anxiety" and indicated her last day in the employment would be May 29, 2024. The employer responded on May 15, 2024 to indicate acceptance of the resignation. The employer subsequently elected to move up the separation date to May 20, 2024.

At the time the claimant applied for the Social Services Coordinator position, the claimant disclosed that she had previously been diagnosed with anxiety. The claimant has provided a medical note for the appeal hearing that indicates she has been under the care of a licensed and practicing physician for a number of years for anxiety. The claimant advises that she was diagnosed with post-traumatic stress disorder (PTSD) after witnessing a close relative's sudden passing more than two decades ago. The claimant did not provide medical documentation to the employer prior to or during the period of employment. The medical documentation the claimant provided for the appeal hearing does not mention a PTSD diagnosis and does not indicate the medical provider advised the claimant to leave the employment.

At the time the claimant accepted employment at Heritage Specialty Care Center, she did so with the understanding that she would be serving rehabilitation patients/residents and that another social worker would be assigned to serve terminal patients/residents including those receiving hospice care. The claimant had not worked in a nursing home environment or with hospice patients prior to joining Heritage Specialty Care Center. Prior to accepting the employment, the claimant and her therapist concluded the nursing home work environment might function as a sort of informal "exposure therapy" that might be helpful for the claimant's anxiety issues.

In early May 2024, after the claimant had been in employment for almost two months, the employer began to assign hospice patients to the claimant. At first, the employer assigned only a small number of hospice patients. The employer then added more hospice patients to the claimant's work assignment. Multiple hospice residents passed away during this period. The deaths and the experience of seeing deceased persons' bodies wheeled through the facility were upsetting to the claimant, even though the claimant understood that death is part of the life cycle. When the claimant learned from the employer that she would thereafter continue to be assigned hospice patients on a regular basis due to decreased rehabilitation patient numbers, she elected to submit her resignation, rather than acquiesce in the changes in the employment. At the time the claimant discussed her concerns with her supervisor, the supervisor acknowledged that hospice work is challenging and not for everyone.

Though the assignment of hospice patients was the primary basis for the claimant's decision to leave the employment, the claimant was also concerned that the facility's nursing staff had created unsafe work conditions by failing to post notice regarding patients with serious contagious diseases. Twice during the week of May 5, 2024, the claimant interacted with patients/residents as part of the intake process, and shared paperwork and pens with those patients/residents, without being informed by the nursing staff that the patient/resident had a serious, contagious illness. Because these contacts occurred as part of the intake process, the claimant did not yet have access to the nursing charts that would have disclosed the contagious illnesses. In one instance, a nursing staff member encountered the claimant as the claimant exited a patient/resident's room, was surprised to see the claimant was not wearing personal protect equipment (PPE), and asked whether the claimant had worn her PPE when interacting with the resident. When the claimant mentioned that the nursing staff had not posted notice that the resident/patient had a contagious disease, the nursing staff member indicated the nursing staff had forgotten to post the notice.

After the claimant separated from the employment, she established an "additional claim" for benefits that Iowa Workforce Development deemed effective May 19, 2024. IWD Benefits Bureau erroneously scheduled two fact-finding interviews regarding the same employment separation. On June 4, 2024, the claimant participated in the first fact-finding interview, regarding the reference 04 issue. On June 5, 2024, IWD Benefits Bureau mailed the

reference 04 decision to the claimant. The claimant received the reference 04 decision on or about June 7, 2024. The reference 04 decision allowed benefits for the week of May 19-25, 2024, provided the claimant was otherwise eligible, based on the determination that the claimant's resignation had prompted the employer to terminate the employment on May 20, 2024, earlier than the claimant's May 29, 2024 effective quit date. Another effect of the reference 04 decision was to disqualify for the claimant for benefits effective May 26, 2024, based on the voluntary quit. However, the text of the reference 04 decision did not clearly state that the claimant was disqualified for benefits effective May 26, 2024. Instead, the decision referenced a requirement that the claimant earn 10 times her weekly benefit amount and meet all other eligibility requirements to become eligible for benefits. The reference 04 decision stated that the decision would become final unless an appeal was postmarked or received by the Appeals Bureau by June 15, 2024. The reference 04 decision also stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. June 15, 2024 was a Saturday and the next working day was Monday June 17, 2024.

On June 5, 2024, IWD Benefits Bureau mailed a notice to the claimant regarding the second fact-finding interview regarding the same voluntary quit. The notice set a second fact-finding interview for June 11, 2024. On June 11, 2024, the claimant participated in the second fact-finding interview. Based on erroneous comments made by one or more IWD representatives, and based on the confusing language of the reference 04 decision, IWD led the claimant to understand that the first fact-finding interview and decision pertained only to her eligibility for benefits during the notice period and that second fact-finding interview and decision pertained to her actual quit from the employment. At the time the claimant participated in the reference 06 fact-finding interview on June 11, 2024, the claimant understood that she would receive a new reference 06 decision that would address her eligibility for benefits beyond the quit notice period. When the claimant had not received a new decision by Friday, June 14, 2024, she called IWD. At that time, an IWD representative told her to expect a decision in the mail. When the claimant had not received a new decision by Monday, June 17, 2024, she again called IWD and an IWD representative told her to expect a decision in the mail. Based on the erroneous information IWD provided, the claimant did not file an appeal from the reference 04 decision by the June 17, 2024 extended appeal deadline. IWD records (NMRO) reflect that the IWD Benefits Bureau had actually deleted the reference 06 matter from IWD records on June 12, 2024, one day after the second fact-finding interview.

On Tuesday, June 18, 2024, the claimant went to her local IowaWORKS Center and spoke with an agency representative. At that time, the claimant learned about the deletion of the reference 06 matter related to the second fact-finding interview. At that time, and IWD representative advised the claimant to immediately file an appeal explaining why her appeal from the reference 04 decision was a day late.

On June 18, 2024, the claimant completed and transmitted an online appeal from the reference 04 decision. The claimant included information regarding her reliance on information IWD provided about the need to wait for a second decision, about her attempt to follow up on the matter, and about learning on June 18, 2024 that IWD had deleted the second fact-finding interview matter. The Appeals Bureau received the appeal on June 18, 2024, and treated it as a late appeal from the June 5, 2024 (reference 04) decision.

REASONING AND CONCLUSIONS OF LAW:

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, subsections 10 and 11, 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 87124.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 87124.35(1)(b).

The evidence in the record establishes 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. 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. *See* Iowa Administrative Code rule 87124.35(2)(c).

The evidence in the record establishes good cause to treat the claimant's June 18, 2024 late appeal from the reference 04 decision as a timely appeal. The weight of the evidence indicates that the late filing of the appeal was attributable to IWD erroneously scheduling two fact-finding interviews to address the same separation, the confusing and incomplete information IWD provided in the reference 04 decision, and the erroneous information IWD representative's provided to the claimant on June 14 and 17, 2024. Because there is good cause to treat the late appeal as a timely appeal, the administrative law judge has jurisdiction to enter a decision on the merits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

The administrative law judge will now address the voluntary quit. As the employer did not appear for or participate in the appeal hearing, the evidence regarding the voluntary quit is limited to the evidence provided by the claimant.

Iowa Code section 96.5(1)(d) 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 Administrative Code rule 81724.26(6) provides as follows:

> 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.
> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to

> the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB,* 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant presented insufficient evidence to prove that her decision to leave the employment was based on advice from a licensed and practicing physician or that there was a medical issue that necessitated her departure from the employment. Though the claimant went to the effort of collecting a statement from the medical provider for use in unemployment insurance matters, that documentation says nothing about the provider advising the claimant to leave the employment. Nor did the claimant provide the employer with medical documentation or any other information indicating a medical provider had advised her to leave the employment. But read on.

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Iowa Admin. Code r. 871-24.26(2) 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:
>
> (2) The claimant left due to unsafe working conditions.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 87124.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 1 (Iowa 2005).

The evidence in the record establishes a voluntary quit for good cause attributable to the employer, based on issues not directly related to the claimant's mental health history. The claimant's May 15, 2024 resignation followed the employer's drastic modification in the type of work performed by the claimant, from working to support rehabilitation patients/residents during their recovery to serving hospice patients. This was no minor change to the conditions of the employment. At the time of the claimant's resignation notice, the employer acknowledged the challenging nature of the work with hospice patients. The unfolding of events suggests a bait-and-switch whereby the employer waited for the claimant to adjust to the work environment and then substantially changed the nature of the work. The change in the type of assigned residents/patients was indeed a substantial change in the conditions of the employment and provided good cause attributable to the employer for the voluntary quit.

The evidence establishes additional good cause bases for the voluntary quit, based on unsafe, intolerable and detrimental working conditions. Twice during the last two weeks of the employment the nursing staff failed to notify the claimant that particular residents/patients had serious, contagious illness. The lack of notice prevented the claimant from using appropriate personal protective equipment prior to interacting with the residents/patients and unreasonably exposed the claimant to the risk of contracting serious illnesses.

DECISION:

The claimant's appeal from the June 5, 2024 (reference 04) decision was timely. The reference 04 decision is REVERSED. The claimant voluntarily quit with good cause attributable to the employment. Though the claimant provided a May 29, 2024 quit date, the employer elected to terminate the employment early on May 20, 2024. Based on the May 20, 2024 separation for good cause attributable to the employer, the claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

July 8, 2024
Decision Dated and Mailed

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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:

Employment Appeal Board
6200 Park Ave 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.

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:

Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En linea: 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 está en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf.

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.