

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LEIDY ALEJO GONZALEZ**  
Claimant

**APPEAL 21A-UI-18617-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASSOCIATED MATERIALS LLC**  
Employer

**OC: 04/25/21  
Claimant: Appellant (2R)**

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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 August 19, 2021, Leidy Alejo Gonzalez (claimant/appellant) filed an appeal from the July 16, 2021 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on April 20, 2021 for personal reasons.

A Notice of Hearing was mailed on October 4, 2021 for a hearing on October 13, 2021. This did not comport with the 10-day notice period required by law. The hearing was therefore rescheduled to allow for ten days' notice.

A hearing was held on November 2, 2021. Claimant participated personally and with the assistance of a Spanish interpreter. Claimant's husband, Jose Luis Gonzalez, participated as a witness for claimant. Associated Materials LLC (employer/respondent) participated by Michelle Hughes.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Was the separation from employment disqualifying?

**FINDINGS OF FACT:**

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

Claimant began working for employer on December 7, 2020. Claimant was employed full-time as a parts processor. The most recent day claimant performed work for employer was April 20, 2021. Claimant reported to employer on or about that date that the right side of her body was injured due to long hours and repetitive motions at work. Her doctor restricted her from working beginning at that time and claimant was placed on medical leave.

Claimant contacted employer again on June 6, 2021 to provide work restrictions from her doctor. She was largely restricted from using the right side of her body, which meant she could not perform the essential functions of the parts processor position. Employer notified claimant it could not return her to her position within those restrictions and that no alternative work was available. Employer formally terminated claimant in a letter dated June 22, 2021. Claimant has not since recovered and attempted to return to work with employer. She started a different position with another employer in the last week of October 2021.

The Unemployment Insurance Decision was mailed to claimant at the above address on July 16, 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 July 26, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision via fax on August 19, 2021.

Claimant did receive the decision. The delay in appealing was due to the Department not receiving claimant's appeal email, which she sent on July 22, 2021. Claimant followed up several weeks later after not hearing from the Department and learned the email was not received. She faxed in an appeal at that time.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The July 16, 2021 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on April 20, 2021 for personal reasons is REVERSED.

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."

Claimant did appeal via email in a timely manner but the email was not received. She was diligent and followed up with the Department after not hearing back and then sent her appeal again via fax upon learning it was not previously received. The administrative law judge finds the delay in appealing was due to agency error. 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. 871-24.26 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.

...

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.

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).

The administrative law judge finds claimant has carried her burden of proving the voluntary leaving was for good cause attributable to employer. She left due to a work-related injury. She notified employer of the injury and offered to return to work with restrictions but no comparable work was offered. Claimant did not voluntarily terminate her employment was instead terminated due to being unable to return to her position. The separation from employment was therefore not disqualifying.

However, this matter must be remanded to the Benefits Bureau for a determination as to whether claimant was able and available for work during the weeks filed.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The July 16, 2021 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on April 20, 2021 for personal reasons is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.

**REMAND:**

This matter is REMANDED to the Department for a determination as to whether claimant was able and available for work during the weeks filed.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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November 30, 2021  
Decision Dated and Mailed

abd/mh