

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALLIE J FAIRCLOTH
Claimant

MANATTS INC
Employer

APPEAL NO. 21A-UI-17358-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/24/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Allie Faircloth, filed a late appeal from the September 4, 2020, reference 02, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on April 30, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 1, 2021. Claimant participated. Jamie Edelen represented the employer. There were four appeal Numbers set for a consolidated hearing: 21A-UI-17358-JT-T, 21A-UI-17359-JT-T, 21A-UI-17360-JT-T and 21A-UI-17361-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX and KLOG.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Manatt's Inc. as a full-time road construction crew laborer. The claimant began the employment in August 2019 and last performed work for the employer on April 30, 2020. The claimant was then on an approved medical leave through May 8, 2020 and was expected to return to work on May 11, 2020. The claimant did not return to work on or after May 11, 2020 and did not make further contact with the employer until June 5, 2020. After the claimant absent three consecutive days without notice to the employer, in violation of the employer's no-call/no-show policy, the employer concluded the claimant had voluntarily quit the employment. On June 5, 2020, the claimant sent a text message to her supervisor in which she apologized for the way in which she had separated from the employment.

The claimant established an original claim for benefits that was effective November 24, 2019 and an "additional claim" that was effective May 3, 2020.

On September 3, 2020, the claimant participated in a fact-finding interview that addressed her separation from Manatt's, Inc. During the fact-finding interview, the Benefits Bureau deputy told the parties they could expect to receive a decision in the mail in the following days.

On September 4, 2020, Iowa Workforce Development mailed the September 4, 2020, reference 02, decision to the claimant's Des Moines last-known address of record. The reference 02 decision disqualified the claimant for benefits, based on the deputy's conclusion that the claimant had voluntarily quit employment with Manatt's Inc. on April 30, 2020 without good cause attributable to that employer. The reference 02 decision stated the decision would become final unless an appeal was postmarked by September 14, 2020 or was received by the Appeal Section by that date. The reference 02 decision included clear and concise instructions for filing an appeal online, by fax or by mail.

The claimant did not receive the reference 02 decision that was mailed to her on September 4, 2020.

On July 28, 2021, Iowa Workforce Development mailed three overpayment decisions to the claimant. The overpayment decisions were based on the September 4, 2020, reference 02, disqualification decision. The overpayment decisions included an August 9, 2021 deadline for appeal. On August 2, 2021, the claimant completed and transmitted an appeal from the one of the overpayment decisions. The Appeals Bureau received the Appeal on August 2, 2021, and treated it as also an appeal from disqualification decision and the additional overpayment decisions.

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 871-24.35(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 871-24.35(1)(b).

The claimant's appeal was filed on August 2, 2021, when the Appeals Bureau received the online appeal transmitted that day.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the reference 02 decision and the date August 2, 2021 appeal. 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). 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 claimant did not receive the reference 02 disqualification decision when it was mailed on September 4, 2020 and therefore did not have a reasonable opportunity to file an appeal from the decision by the September 14, 2020 deadline. The claimant had not received a copy of the decision by the time she received the overpayment decisions that were mailed to her on July 28, 2021 with an August 9, 2021 deadline for appeal. The claimant filed her appeal on August 2, 2021. The weight of the evidence establishes good cause, based on the non-delivery of the reference 02, decision, to treat the late appeal from that decision as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). 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).

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.

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.

A claimant who was absent for three days without giving notice to employer in violation of company rule is presumed to have quit without good cause attributable to the employer. See Iowa Admin. Code rule 871-24.25(4).

Iowa Admin. Code r. 871-24.22(2)(j) provides

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in the record establishes the claimant voluntarily quit without good cause attributable to the employer by failing to return to work at the end of the leave of absence and by being absent three days without notifying the employer, in violation of the employer's attendance policy. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The claimant's appeal from the September 4, 2020, reference 02, decision was timely. The reference 02 decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective May 11, 2020. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

November 29, 2021
Decision Dated and Mailed

jet/kmj

Note to Claimant: This decision determines you are not eligible for regular or PEUC unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits or PEUC benefits, but who are unemployed 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.