

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHAYNA N ROJAS

Claimant

APPEAL NO. 21A-UI-07208-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIRACLE DUBUQUE INC

Employer

OC: 03/22/20

Claimant: Appellant (4)

Iowa Code Section 96.5(1) – Voluntary Quit to Accept Other Employment

Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Shayna Rojas, filed a late appeal from the February 26, 2021, reference 01, 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 January 31, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 19, 2021. Claimant participated. Tanya Pothoff represented the employer. Exhibits 1, A and B were received into evidence. The administrative law judge took official notice of the February 26, 2021, reference 01, decision and of the quarterly wage reports (WAGE-A).

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely. Whether the claimant's voluntary quit was without good cause attributable to the employer. Whether the claimant voluntarily quit for the sole purpose of accepting better or other employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed by Miracle Dubuque, Inc., d/b/a Suntan City during three distinct periods. The employment in question began in early 2019 and ended on January 23, 2020, when the claimant voluntarily quit. During the relevant period of employment, the claimant's job title was Assistant Salon Director. The employment was full-time and paid \$11.00 an hour. The claimant provided the employer with about a month's notice that she would be leaving the employment in anticipation of relocating to Davenport to attend college. The employer had ongoing work available for the claimant at the time of the separation. The claimant relocated to Davenport in March 2020.

At the time the claimant worked full-time for this employer, she also worked part-time at Applebee's in Muscatine as a part-time server and bartender. While the claimant was still employed full-time at Suntan City, she worked about 20 hours a week at Applebee's. At the

time the claimant ended her employment with Suntan City, she planned to continue in the Applebee's employment and to transfer to a position in Moline, Illinois when she relocated to Davenport. In the meantime, the claimant transitioned from part-time to full-time status at Applebee's. The Applebee's employment provided a \$4.35 hour wage and tips. The combined compensation exceeded the \$11.00 wage at Suntan City. The claimant continued in the Applebee's employment. The Applebee's employment, and the claimant's plan to transfer to Moline were impacted by the Arrival of the COVID-19 pandemic.

On February 26, 2021, Iowa Workforce Development mailed the February 26, 2021, reference 01, decision to the claimant's Muscatine last-known address of record. The Muscatine address was the claimant's grandfather's home, where the claimant had resided for three years period to relocating to Davenport in March 2020. The claimant had provided the Muscatine address to IWD as her mailing address when established her original claim for benefits in March 2020. The claimant did not update her address with Iowa Workforce Development when she relocated to Davenport. However, the claimant did complete a mail forwarding request with the United States Postal Service. The claimant received the forwarded decision in the mail on March 8, 2021, the same day the appeal was due. On March 10, 2021, the claimant completed and transmitted an online appeal. In that appeal, the claimant stated she had received the decision on March 8, 2021.

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 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). 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).

Delay attributable to the United States Postal Service's forwarding system provides good cause basis for treating the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The claimant did not receive the decision until it arrived in the mail on March 8, 2021, the appeal deadline date. Based on receipt of the decision so close in time to the appeal deadline did not allow reasonable opportunity for the claimant to file an appeal by the March 8, 2021 deadline. The claimant filed her appeal two days later. The claimant did not unreasonably delaying filing the appeal. The administrative law judge has jurisdiction to enter a ruling based on the merits of the appeal.

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).

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

An individual shall be disqualified for benefits:

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment

compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant quit for the sole basis of accepting and transitioning to full-time employment in her second employment at Applebee's, which provided higher compensation and the opportunity to position the claimant for transfer to gainful employment when the claimant subsequently moved to the Quad Cities. The claimant did not move to the Quad Cities for school until March 2020, more than a month after she separated from this employer. Even after the move to the Quad Cities for school, the claimant continued her employment relationship with Applebee's in Muscatine. The claimant is eligible for benefits, provided she meets all other eligibility requirements. This employer's account shall not be charged. The wage credits from this employment shall instead be assessed against the unemployment compensation fund.

DECISION:

The claimant's appeal was timely. The February 26, 2021, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant voluntarily quit the employment without good cause attributable to the employer for the sole basis of accepting and transitioning to full-time employment with her second employer. The claimant is eligible for benefits, provided she meets all other eligibility requirements. This employer's account shall not be charged. The wage credits from this employment shall instead be assessed against the unemployment compensation fund.



James E. Timberland
Administrative Law Judge

May 27, 2021
Decision Dated and Mailed

jet/ol