

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY A JONES
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 20A-UI-14372-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On November 9, 2020, Amy Jones (claimant/appellant) filed an appeal from the June 23, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on March 19, 2020 without good cause attributable to employer.

A telephone hearing was held on January 11, 2021. The parties were properly notified of the hearing. Claimant participated personally and was represented by non-attorney representative Jeffery Gronstal. Employer participated by store manager Joel Thooft. Assistant Manager Julie Sayer participated as a witness for employer.

Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

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

Claimant began working for employer on November 2, 2016. The last day claimant performed work for employer was March 19, 2020. Claimant resigned at that time. Claimant was employed full-time in the kitchen area.

On March 19, 2020, claimant went into work and spoke with Sayer. Claimant stated she and her husband had medical conditions which made them particularly susceptible to the pandemic and she did not feel safe continuing to work for employer. Claimant did not present medical documentation at that time, request an accommodation, or request a leave of absence. Claimant had not previously brought concerns of this nature to employer, although employees had informally discussed concerns regarding the pandemic. Claimant characterizes this exchange as her requesting to be laid off or discharged.

Sayer asked if claimant would be in to work at all after that date. Claimant stated she would not. Sayer told claimant she would let Thooft know of her decision. Claimant understood this to mean that Thooft would get in touch with her. However, claimant did not hear from thought. Sayer simply communicated to Thooft that claimant had resigned. Claimant was scheduled to work after that date but did not return to work. Neither party has contacted the other about a potential return to work. There was continuing work available if claimant had not resigned.

Employer was just beginning to implement safety procedures around the time claimant resigned. It is unclear when specifically those procedures were implemented. This included installing plexi-glass, mandating social distancing, and increased cleaning. In claimant's position, she was not often in close contact with customers or more than one or two coworkers.

The Unemployment Insurance Decision was mailed to claimant at the above address on June 23, 2020. That was claimant's correct address on that date. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 3, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant does not recall receiving the decision. Claimant appealed only after learning of the potential overpayment of benefits. Claimant appealed via email on November 9, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The June 23, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on March 19, 2020 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 indicates claimant did not the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant did file an appeal shortly after learning she may have been overpaid benefits. The administrative law judge therefore finds the appeal is timely and he has jurisdiction to address the underlying issues.

As an initial matter, the administrative law judge finds claimant's separation from employment was a voluntary resignation. While claimant characterizes the March 19, 2020 exchange with Sayer as her requesting to be laid off or discharged, the evidence shows claimant had the option of remaining employed and but chose not to. In other words, claimant exercised a voluntary choice to end the employment relationship. As such, this case must be analyzed as a voluntary resignation rather than a discharge or layoff.

Iowa Code section 96.5(1)a 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:

(2) The claimant left due to unsafe working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

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.

Claimant resigned because she and her husband have medical conditions which make them particularly susceptible to the pandemic, and she did not feel safe continuing to work for employer. Claimant did not indicate to employer that she may be forced to resign for this reason until March 19, 2020. On that date she simply appeared and stated she would not work further for those reasons. By suddenly bringing this concern and declining to continue to work for any period after, claimant largely deprived employer of an opportunity to address the issues in a way that may have salvaged the employment relationship. Neither did claimant present medical documentation in support of her request, suggest an accommodation or leave of absence, or attempt to return to work with employer after more safety measures had been put in place.

The administrative law judge finds a reasonable person would not find the working conditions so unsafe, intolerable, and/or detrimental as to justify resignation. This is particularly true where claimant had not previously put employer on notice of her potential resignation and provided employer an opportunity to address those issues or explore alternatives to separation from employment.

The administrative law judge wishes to note that while this decision denies regular, state 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 June 23, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on March 19, 2020 without good cause attributable to employer is **AFFIRMED**.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 1, 2021
Decision Dated and Mailed

abd/mh

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.