

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**PEGGY S YOERGER**  
Claimant

**TRADER PHD LLC**  
Employer

**APPEAL 23A-UI-05914-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/30/23**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On June 8, 2023, the employer filed an appeal from the May 26, 2023, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that claimant quit employment with good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2023. The claimant, Peggy S. Yoerger, participated personally. The employer, Trader PhD LLC, participated through HR Director Crystal Ward. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is the employer's appeal timely?  
Did the claimant voluntarily quit employment without good cause attributable to the employer, or was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a special events coordinator from September 18, 2017, until this employment ended on April 28, 2023, when she resigned.

For more than five years, claimant worked remotely out of her home, which is one hour away from the employer's current location. Claimant was the only employee who worked remotely prior to the COVID-19 pandemic. She did not receive disciplinary warnings about her remote work or her performance when working remotely.

On April 19, 2023, claimant was in the midst of a two-week vacation. Her supervisor, Chani Tancredi, requested to speak with claimant while she was on vacation. Claimant spoke with Tancredi that day. Tancredi relayed the employer's new policy that required all employees to return to the office full time effective April 24, 2023. Claimant requested a meeting with Tancredi and the owner, Chad Toyne, regarding the change. Claimant did not hear anything from Tancredi or Toyne regarding the meeting until after she returned from vacation. On April 25, 2023, claimant received a meeting request for the afternoon of April 27, 2023.

Claimant attended the meeting on April 27, 2023, after working from her home that morning. At the meeting, Toyne told claimant she was no longer allowed to work from home effective immediately. She was not even allowed to complete the workday remotely. Claimant stated that she had recently moved her mother, for whom she cares, in with her and she needed time to get her care in order. The employer offered claimant 30 days unpaid leave in order to secure care for her mother so that claimant could return to the office. Claimant could not take 30 days of unpaid leave. When claimant left the meeting, she was told she was expected to provide the employer with her decision regarding returning to the office the following day at noon. On April 28, 2023, claimant confirmed for the employer that she could not return to the office and could not take 30 days of unpaid leave. The employer accepted this as her resignation. Had claimant not resigned employment, the employer would have continued to offer her work.

The administrative record indicates that claimant filed a claim for unemployment insurance benefits with an effective date of April 30, 2023. Since that time, she has filed for and received unemployment insurance benefits in the gross amount of \$4,408.00. The employer substantially participated in the fact-finding interview.

An unemployment insurance decision was mailed to the employer's address of record on May 26, 2023. According to the administrative record, Iowa Workforce Development's recorded address for the employer contains an incorrect suite number. This sometimes delays the delivery of decisions. In the case of this decision, Ward believed its delivery may have been delayed, though she did not know with certainty. Ward has attempted to correct the issue with Iowa Workforce Development a number of times with no success. The decision stated that any appeal was due by June 5, 2023. The employer filed its appeal on June 8, 2023. The appeal was filed as soon as Ward received the decision.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code section 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) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); *see also In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a decision, no meaningful opportunity for appeal exists. *See Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed an appeal within a reasonable period of time after discovering the decision. It should not be punished for a clerical error in Iowa Workforce Development's system that the employer has attempted to correct on a number of occasions. Therefore, the appeal shall be accepted as timely.

The next question to be addressed was whether claimant's separation from employment was disqualifying.

Iowa Code section 96.5(1) provides:

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.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The administrative law judge concludes that claimant quit employment. The employer continued to offer claimant work and even expressed interest in retaining her as an employee provided she adhered to its new requirements. Claimant refused to adhere to the new requirements and, in effect, resigned employment.

Claimant was presented with two untenable options that went into effect immediately. She was told she could either return to office work one hour from her home immediately—indeed, she was told she could not return to work remotely even on the day of the meeting regarding the issue—or she could take 30 days of unpaid leave in order to secure care for her mother. Either option presented a substantial change in the conditions of claimant's employment. The employer was so inflexible as to refuse to present any other options to claimant despite a long history of claimant's remote work with the company. While the employer is certainly entitled to make personnel decisions based upon its needs, that need does not necessarily relieve it from potential liability for unemployment insurance benefit payments. Since claimant's work location and conditions of employment changed substantially because of a business decision, the separation was with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Because the separation is not disqualifying, the issues of overpayment, repayment, and participation are moot.

**DECISION:**

The employer's appeal is accepted as timely. The May 26, 2023, (reference 01) unemployment insurance decision is AFFIRMED. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and participation are moot.



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Alexis D. Rowe  
Administrative Law Judge

June 30, 2023  
Decision Dated and Mailed

ar/scn

**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.