

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

**LINDSEY MCDOWELL**  
Claimant

**APPEAL 22A-UI-09748-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 05/17/20  
Claimant: Appellant (3)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.4(3) - Able and Available to Work  
Iowa Admin. Code r. 871-24.23(10) - Eligibility - A&A - Leave of absence  
Iowa Admin. Code r. 871-24.23(1) - Eligibility - A&A - Illness  
Iowa Admin. Code r. 871-24.22(2)j(2) - Leave of Absence - Voluntary Quit

**STATEMENT OF THE CASE:**

On April 18, 2022, Lindsey McDowell, claimant/appellant, appealed from the July 27, 2021, (reference 03) unemployment insurance decision that denied benefits as of 09/20/20 based upon records showing claimant requested and was granted a leave of absence, making her voluntarily unemployed and not available for work. The parties were properly notified about the hearing. A telephone hearing was held on June 3, 2022, at 2:00PM. Claimant personally participated. Employer, Walmart, Inc., participated through Amelia Gallagher, party representative and Thomas Hynes, food and consumables coach. Both parties waived the defect in the notice of hearing, that failed to have included Iowa Code § 96.5(1), voluntary quit. By waiving the defect, that code section is now added to the notice of hearing and will be addressed in this appeal. The following hearings were held together as part of a consolidated hearing: Appeals 22A-UI-09748-DH-T; 22A-UI-09749-DH-T; and 22A-UI-09750-DH-T. Judicial notice was taken of the administrative record. Employer's exhibit R-1 was admitted without objection.

**ISSUES:**

Is the appeal timely?  
Is the claimant able to and available for work?  
Is the claimant on an approved leave of absence?  
Was the separation a voluntary quit without good cause?

**FINDINGS OF FACT:**

Having heard the testimony and considered the evidence in the record, the undersigned finds:

Claimant's appeal is dated 04/18/22. The decision was mailed to claimant's last known addresses on 07/27/21, which is the same address she confirmed at the appeal hearing. To be timely, the appeal needed to be filed on or before 08/06/21. Claimant did not receive this decision. Claimant

learned about the decision at hand when she received the companion overpayment decisions (reference 04 and 05) in April 2022 and timely appealed those overpayment decisions.

Claimant was employed at Walmart, Inc., as a fulltime online grocery picker with a varied schedule. Her first day worked was 12/29/18. Claimant's last day worked was 04/11/20. Claimant was separated from work on 09/23/20 for job abandonment for not having contact with her employer and not returning from her leave of absence that ended 07/06/20.

Claimant requested and was granted a leave of absence. She had leave on 04/01/20, and maybe another day or two through 04/10/20. Claimant worked 04/11/20. Claimant missed work starting 04/12/20, through and including 07/06/20, and was on an approved leave of absence. Claimant was to return to work on 07/07/20 since her approved leave of absence had ended. Claimant did not return to work on that date as she was too ill to come to work. Claimant was too sick to work from 07/07/20, through and including 10/21/20. After working on 04/11/20, claimant never returned to work. She was deemed to have abandoned her job effective 09/23/20, for not returning to work (a voluntary quit).

The employer sent an end of leave letter to claimant dated 08/30/20, regarding her approved leave of absence had ended on 07/06/20, and that she needed to contact her manager or human resources representative to make plans for her return to work or discuss other options that might be available and if she failed to do so promptly, she may be deemed to have voluntarily quit her position. See R-1, pages 15 and 16. The employer did not hear from claimant.

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

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is deemed timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

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Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

The record in this case shows 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 representative's decision 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 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant's receipt of the companion overpayment decisions (reference 04 and 05) in April 2022, was her first notice of the disqualification. Claimant timely appealed the two overpayment decisions. Therefore, this appeal shall be accepted as timely.

The next issue is whether claimant was able to and available for work or otherwise on an approved leave of absence. It is determined that claimant was not able to and available to work and was on an approved leave of absence for the reasons set forth below.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(10), and (1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(1) An individual who is ill and presently not able to perform work due to illness.

As set forth in the fact-finding section, from 04/12/20 through and including 07/06/20, claimant was on an approved leave of absence and from 07/07/20 through and including 10/21/20, claimant was too ill to work. This makes claimant not eligible for benefits starting April 12, 2020, through October 24, 2020, as she was not available for work due to her approved leave of absence and illness.

The next issue is whether the separation was a voluntary quit with good cause attributable to the employer. The undersigned concludes claimant voluntarily quit without good cause.

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. 871-24.25(37) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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). Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may constitute good cause for an employee to quit, if the reasons are attributable to the employer." *McCunn v. Empl. Appeal Bd.*, 451 N.W.2d 510 (Iowa App. 1989) (citing *Taylor v. Iowa Dept. of Job Serv.*, 362 N.W.2d 534 (Iowa 1985)). "An employee may choose to leave employment for several reasons, with each reason important in the decision to quit." *Taylor*, 362 N.W.2d at 540.

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

(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.

Claimant was on a leave of absence. The last day of the leave of absence was 07/06/20 and claimant was to return to work 07/07/20. Claimant never returned to work once starting her leave of absence on 04/12/20. Employer advises they never heard from claimant, sent her a letter regarding the end of her leave and made other attempts to reach her. Claimant states she called her employer once, who told her to call Sedgwick (third party benefits coordinator) and she made repeated attempt to call Sedgwick but could not get through. Claimant admits she knew her leave ended 07/06/20 and she was to return 07/07/20, but was too sick to go to work, and that status of being too sick to work lasted through and including 10/21/20.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

Employer gave claimant an opportunity to come back to work but after a number of attempts to reach out to claimant and receiving no contact from claimant, employer found claimant had voluntarily quit by failing to contact employer and failing to return to work after her leave of absence, effective 09/23/20.

**DECISION:**

The July 27, 2021, (reference 03) unemployment insurance decision that denied benefits as of 09/20/20 finding claimant was voluntarily unemployed by being on an approved leave of absence is **MODIFIED** in favor of respondent. It is found that claimant is not eligible for benefits starting April 12, 2020, through October 24, 2020, as she was not able to and available for work. It is further found that claimant voluntarily quit work effective 09/23/20 and benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Darrin T. Hamilton  
Administrative Law Judge

October 3, 2022  
Decision Dated and Mailed

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**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 adquiera 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.