

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHANNA PAYE
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL 20R-UI-12605-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/31/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 18, 2020 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was scheduled for August 11, 2020. No hearing was held because appellant failed to respond to the hearing notice and provide a telephone number at which appellant could be reached for the scheduled hearing. On August 18, 2020, a default decision was issued dismissing the appeal (20A-UI-07652-HP-T).

On August 25, 2020, claimant appealed to the Employment Appeal Board (EAB). On October 12, 2020, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on December 10, 2020 at 2:00 p.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the incorrect address on June 18, 2020. Claimant did not receive the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by June 28, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. June 28, 2020 was a Sunday; therefore, the deadline was extended until June 29, 2020. Claimant appealed the decision online on July 2, 2020. The appeal was received by Iowa Workforce Development on July 2, 2020. Claimant learned of the decision when she contacted Iowa Workforce Development to check on the status of her claim. Claimant filed her appeal promptly after learning of the decision.

Having reviewed all of the evidence in the record, the administrative law judge further finds: Claimant was employed as a full-time Caregiver for approximately two to three years until her employment with Good Samaritan Society ended on December 26, 2019. Claimant requested time off from employer to care for her mother who resides in Minnesota. Employer approved claimant's request. The parties agreed on a date that claimant would return to work in January 2020. Claimant returned to Iowa and heard through a coworker that there was no work available. Claimant did not contact employer and did not return to work. Claimant returned to Minnesota to care for her mother from January 2020 through March 2020. Claimant remains in Minnesota. Claimant has children for whom she requires childcare in order to go to work. Claimant's children's schools were eventually closed due to Covid-19. Claimant had no alternate childcare.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant's appeal was timely.

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) 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. 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).

Claimant did not receive the decision prior to the deadline. Claimant's delay in submitting her appeal was due to agency error or delay by the United States postal service. Therefore, claimant's appeal is considered timely.

The next issue to be determined is whether claimant's separation from employment is disqualifying. For the reasons that follow, the administrative law judge concludes that claimant voluntarily quit her employment without good cause attributable to employer. Benefits are denied.

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(2), (17), (20) provide:

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:

(2) The claimant moved to a different locality.

(17) The claimant left because of lack of child care.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Claimant left her employment and did not return. This is evidence of her intention to sever her employment relationship and an overt act of carrying out her intention. Claimant voluntarily quit. Claimant provided many reasons for quitting her job. Claimant left work to care for her ailing mother and did not return to work. Claimant went to Minnesota to care for her mother a second time and remains in Minnesota. Claimant's children were unable to attend school due to Covid-19; therefore, claimant did not have work-related childcare. The administrative law judge has considered all of claimant's reasons for quitting and finds that none of them constitute good cause attributable to employer. While claimant had good personal reasons to quit her job, they are not attributable to employer. Therefore, claimant has not met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Accordingly, benefits are denied.

NOTE TO CLAIMANT: This decision determines you are not eligible for regular 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, 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

Claimant's appeal was timely. The June 18, 2020 (reference 03) unemployment insurance decision is affirmed. Claimant voluntarily quit without good cause attributable to employer. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge
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December 21, 2020
Decision Dated and Mailed

acw/scn