

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTINA M BOLES**

Claimant

**APPEAL 20A-UI-05843-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA FAMILY ASSISTANTS LLC**

Employer

**OC: 03/15/20**

**Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code section 96.3(7) – Overpayment of Benefits  
PL116-136, § 2104 – Eligibility for Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On June 12, 2020, Christina Boles (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated May 12, 2020 (reference 01) that denied benefits.

A telephone hearing was held on July 9, 2020. The parties were properly notified of the hearing. The claimant participated personally. Iowa Family Assistants LLC (employer/respondent) participated by Care Coordinator Heather Will. Operators Director Kim Johnson participated as a witness for employer.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?
- III. Was the claimant overpaid benefits?
- IV. Is the claimant eligible for federal pandemic unemployment compensation?

**FINDINGS OF FACT:**

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

Claimant worked for employer full-time as a caregiver. Claimant's first day of employment was July 1, 2016. The last day claimant worked on the job was March 12, 2020. Claimant resigned at that time to accept full-time employment elsewhere. Claimant did accept that employment but shortly after accepting had her hours at the new employer cut drastically due to the pandemic.

Claimant received the decision in a timely manner, on May 18, 2020. The deadline to appeal the decision was May 22, 2020. She did not initially appeal it because an IWD employee advised her

she did not need to, as she would be eligible for Pandemic Unemployment Assistance (PUA). Claimant subsequently spoke with another IWD employee, who advised her to both appeal and apply for PUA. Claimant did so at that time.

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

For the reasons set forth below, the administrative law judge finds the appeal is **TIMELY**. The administrative law judge further finds the Iowa Workforce Development decision dated May 12, 2020 (reference 01) that denied benefits is **REVERSED**.

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.”

Claimant received the decision in a timely manner, on May 18, 2020. The deadline to appeal the decision was May 22, 2020. She did not initially appeal because an IWD employee advised her she did not need to, as she would be eligible for Pandemic Unemployment Assistance (PUA). Claimant subsequently spoke with another IWD employee, who advised her to both appeal and apply for PUA. Claimant did so at that time.

Claimant did not appeal due to agency misinformation. The administrative law therefore finds the appeal timely.

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. 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.

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. 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. No charge shall accrue to the account of the former voluntarily quit employer.

Claimant resigned to accept full-time employment elsewhere. Claimant did accept that employment. Claimant's separation from employer is therefore not disqualifying. Furthermore, employer's account shall not be charged benefits.

The other issues noticed need not be addressed herein.

**DECISION:**

The administrative law judge finds the appeal TIMELY. The decision dated May 12, 2020 (reference 01) that found claimant is disqualified from receiving unemployment insurance benefits is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account shall not be charged.



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July 22, 2020  
Decision Dated and Mailed

abd/scn