

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TAMERA L BARTRAM**  
Claimant

**APPEAL 17A-UI-03607-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF MONTICELLO**  
Employer

**OC: 02/26/17  
Claimant: Appellant (2)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 20, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2017. The claimant participated and was represented by attorney Kristymarie Shipley. The employer participated through City Administrator Doug Herman. Department's Exhibit D-1, claimant's Exhibits 1 through 3, and employer's Exhibits A through D were received into evidence.

**ISSUES:**

Is the appeal timely?

Was the separation a layoff, discharge for misconduct, or a voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on March 20, 2017. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by March 30, 2017. Claimant's appeal was sent and received via fax on March 30, 2017 at approximately 3:40 p.m.

Claimant was employed full time as the Parks and Recreation Director for the City of Monticello from May 27, 2003, until this employment ended on February 28, 2017, when her position was eliminated. In December 2016 claimant was notified that the City had decided to eliminate her position and instead create two new positions. The two new positions would be that of a Parks and Recreation Director and a Parks Superintendent. The new director position would include job duties different from those of claimant's then-position. Claimant was told if she wanted to remain employed, she would need to reapply for the new positions and it was not guaranteed

she would be hired. Claimant applied for the director position, but was notified in January that someone else had been offered the job. Claimant was offered the superintendent position, which would have included much of the same job duties, at the same rate of pay and benefits she was currently receiving. Claimant turned that position down. Claimant was told the new director would be starting on March 1 and agreed to stay on in her current position until that time. The employer agreed claimant would not have been allowed to remain in her position beyond February 28, 2017.

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

For the reasons that follow, the administrative law judge concludes claimant's appeal is timely and she was laid off due to a lack of work. Benefits are allowed.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The decision states claimant's appeal was due by March 30, 2017. The claimant faxed in her appeal on March 30, 2017 at 3:40 p.m., as evidenced by Department's Exhibit D-1 and claimant's testimony. Claimant's appeal is therefore timely.

The next issue to be addressed is that of the claimant's separation from employment.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Claimant was told in December 2016 that her position was being eliminated and two new positions were being created. Claimant was encouraged to apply for the new positions, but was not guaranteed to be hired. Claimant applied for the director position and was not hired, but was offered another position in January 2017. While claimant was offered another position with the city, her position was no longer available effective March 1, 2017. Claimant declined the position she was offered. As claimant's position was no longer available effective March 1, 2017, the administrative law judge finds her separation was a layoff due to a lack of work. Benefits are allowed.

**DECISION:**

The March 20, 2017, (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was laid off due to a lack of work. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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