IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

EMILY P MONAHAN Claimant **VERA FRENCH COMMUNITY MENTAL HEA** Employer	**APPEAL 21A-UI-15323-S2-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/22/20** **Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136 – Federal Pandemic Emergency Unemployment Compensation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the June 25, 2021, (reference 02) unemployment insurance decision that allowed benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2021. Claimant Emily P. Monahan participated and testified. Employer Vera French Community Mental Health participated through human resources director Shelly Chapman. Employer Exhibits 1 – 6 were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is employer's appeal timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
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: A disqualification decision was mailed to employer's last known address of record on June 25, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by July 5, 2021. The appeal was not filed until July 8, 2021, which is after the date noticed on the disqualification decision. Employer received the decision on July 1, 2021, but its offices were closed over the fourth of July holiday. Employer filed the appeal upon reopening, within seven days of receiving the decision.

Claimant was employed full-time as a school-based therapist from August 3, 2015, and was separated from employment on August 5, 2021, when she quit.

Claimant's job duties included providing individual therapy to clients, scheduling and handling insurance claims, and communication with teachers and parents. Claimant worked 7:00 a.m. to 4:00 p.m., and was off work during the summer and winter and spring breaks, for a total of six weeks.

On July 31, 2020, employer notified its school-based therapists by email that it was restructuring their position. (Exhibit 4) Beginning in the 2020-2021 school year, therapists would be required to conduct in-home visits twice a year for each of their clients and work one evening a week. Additionally, therapists would begin working during winter, spring, and summer breaks. They would begin accruing vacation time and would have to request time off and use their vacation leave for any time off from work. Changes would also be made to the incentive structure, although those changes were not explained.

Employer made these changes to align the school-based therapist positions more closely with the other therapist positions. Employees were given until August 5, 2020, to decide whether they wished to continue with their employment given the change to the position. Therapists were not given the opportunity to ask questions or discuss the changes with management prior to making their decision.

On August 5, 2020, claimant submitted her written resignation by email. (Exhibit 6) She resigned due to the restructuring of the position.

Claimant filed her initial claim for benefits effective March 22, 2020. The administrative record reflects that claimant has received unemployment benefits in the amount of $2,405.00, since her separation, for the five weeks ending September 5, 2020. She did not receive any FPUC benefits. Employer representative Shelly Chapman did participate in a cold call fact finding interview in June 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is timely.

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good

> cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

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. Bd. 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 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 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Employer received the decision just prior to the fourth of July holiday, when the offices were closed. The appeal was filed within seven days of receiving the decision. The appeal shall be treated as timely.

The next issue is whether claimant's separation from the employment was with good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes it was.

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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. “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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Iowa Admin. Code r. 871-24.26(1) provides:

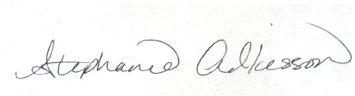
> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract 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.

In this case, claimant was hired on full time as school-based therapist. The position followed the schedule of the assigned school district, and provided for approximately six weeks off during winter and spring breaks and summer. No evening hours or home visits were required. Employer restructured the position to require additional work days during the year and removed the six weeks off each year. It added required evening hours each week, as well as in-home visits to clients. These were not minor changes, but were a drastic change in the scheduled hours and location without any discussion of additional compensation. Claimant has established the contract of hire had changed substantially, and has demonstrated good cause for quitting the employment. Benefits are allowed, provided claimant is otherwise eligible.

Because claimant's separation is not disqualifying, the issues of overpayment and repayment are moot.

DECISION:

The appeal is timely. The June 25, 2021, (reference 02) unemployment insurance decision is affirmed. Claimant quit with good cause attributable to the employer due to a change in contract of hire. Benefits are allowed, provided claimant is otherwise eligible. The issues of overpayment and repayment are moot.



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September 7, 2021
Decision Dated and Mailed

sa/kmj