**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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| **SANDRA J JUHL**<br>Claimant<br><br>**OREILLY AUTOMOTIVE INC**<br>Employer | **APPEAL NO. 21A-UI-07503-JT-T**<br><br>**ADMINISTRATIVE LAW JUDGE DECISION**<br><br>**OC: 12/27/20**<br>**Claimant: Appellant (1)** |

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a late appeal from the February 26, 2021, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on September 28, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 24, 2021. Claimant participated. Justin Overton represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the February 26, 2021, reference 01, decision.

**ISSUES:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.
Whether the claimant voluntarily 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: On February 26, 2021, Iowa Workforce Development mailed the February 26, 2021, reference 01, decision to the claimant at her Enid, Oklahoma last-known address of record. The reference 01 decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on September 28, 2020 without good cause attributable to the employer. The decision stated that the decision would be final unless an appeal was postmarked by March 8, 2021 or was received by the Appeals Bureau by that date. The claimant did not receive the decision the mail until March 10 or 11, 2021. On March 12, 2021, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on March 12, 2021.

The claimant commenced her employment with O'Reilly Automotive, Inc. in 2015. The claimant began her employment in a position in Trenton, Missouri. At the beginning of 2016, the claimant transferred to a position in Enid, Oklahoma, where she stayed for three months before the transferred back to Trenton, Missouri. In March 2020, the claimant transferred to a full-time

Retail Service Specialist position in Atlantic, Iowa. Each of the transfers was initiated by the claimant.

The employer had an established procedure for handling employee transfer request. The employee who wishes to transfer notifies the employee's store manager, who in turn notifies the district manager. That district manager then contacts the district manager in the location to which the employee wishes to relocate. The district manager then determines whether the transfer request will be granted.

In July 2020, the claimant notified her store manager in Atlantic that she wanted to transfer to Enid, Oklahoma. The claimant's store manager, Steven Hurd, contacted Central Iowa District Manager Justin Overton, who in turn contacted the Oklahoma district manager. The claimant wanted not only to transfer, but to transfer to a different type of position. The claimant wanted to move into a driving position, rather than another Retail Service Specialist.

At the time the claimant voluntarily left her Atlantic, Iowa Retail Service Specialist position effective August 6, 2020, no transfer had been approved. At the time the claimant relocated to Enid, Oklahoma on August 8, 2020, not transfer had been approved. The employer had ongoing work available for the claimant at the Atlantic, Iowa location.

On August 10, 2020, the claimant stepped outside the normal transfer protocol and contacted the store manager at the Enid, Oklahoma location where wanted to work as a driver. The store manager said he had work for the claimant. However, the district manager had not yet determined whether to approve the claimant for a transfer to the driving location or whether to approve the claimant for a Retail Service Specialist position at a second location in Enid, Oklahoma.

On July 14, 2020, the claimant had submitted a written request to be exempted from the employer's COVID-19 mask wearing requirement. The claimant cites mental health issues as the basis for her desire not to wear a mask. It was not until September 8, 2020 that the employer received from the claimant's doctor the documentation needed to approve the claimant's request to wear a "flat" face shield in lieu of a mask or fitted face shield.

On September 15, 2020, the employer provided the claimant written notice that the employer had approved the claimant's request for accommodation for accommodation was approved. In the same notice, the employer indicated that the claimant was approved for transfer into the Retail Service Specialist position in Enid, Oklahoma. The employer had placed another employee in the Enid, Oklahoma driving position. The claimant was upset that she did not get her first choice of transfer positions and elected not to accept the Retail Service Specialist position.

**REASONING AND CONCLUSIONS OF LAW:**

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, subsections 10 and 11, 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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. 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). 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. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The evidence in the record establishes good cause to treat the late appeal as a timely appeal. The claimant did not receive the decision until after the appeal deadline had passed and there did not have a reasonable opportunity to file an appeal by the appeal deadline. The claimant received the decision on March 11, 2021 and promptly filed her appeal the following day. The late filing of the appeal was attributable to delay or other action of the United States Postal

Service. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge has jurisdiction to enter a decision based on the merits of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
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> 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer,* 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(2) 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:
>
> (2) The claimant moved to a different locality.

The weight of the evidence establishes that the claimant voluntarily quit her full-time Retail Service Specialist position in Atlantic, Iowa so that she could relocate to Enid, Oklahoma. The quit was without good cause attributable to the employer. The employer was under no obligation to acquiesce in the claimant's attempt to unilaterally force substantial changes in the conditions of the employment through a transfer to a new location or through changing positions from a Retail Service Specialist position to a driving position. The weight of the evidence establishes that the employer was willing to entertain a transfer to a new location, if the employer determined there was a business need and the employer determined the claimant was the right candidate to fulfill the business need. The employer was under no obligation to step outside its established transfer protocol or acquiesce in the claimant doing so. The employer did indeed approve the claimant for a new position in Enid that was the same position she had held in Atlantic, Iowa. However, the claimant rejected that position.

The weight of the evidence establishes there is no merit to the claimant's assertion that her desire for the mask accommodation played any factor in her not getting the driving position in Enid. The Oklahoma district manager was district manager over both stores, the one with the driving position and the one with the Retail Service Specialist position. The weight of the evidence establishes that the employer approved a transfer within a reasonable time after receiving appropriate documentation from the claimant and her doctor regarding the need for the accommodation.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The February 26, 2021, reference 01, decision is affirmed. The claimant's appeal was timely. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

June 03, 2021
Decision Dated and Mailed

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**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 unemployed or continue to be 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 that you must repay.

**ATTENTION:** On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and.