

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HONGSAKHONE SYLALOM

Claimant

APPEAL 18A-UI-09019-LJ

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATHOLIC HEALTH INITIATIVES – IOWA

Employer

OC: 02/25/18

Claimant: Appellant (2R)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 1, 2018 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment due to a lack of childcare. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on October 3, 2018. The claimant, Hongsakhone Sylalom, participated along with non-attorney representative Lena Sylalom. The employer, Catholic Health Initiatives – Iowa, sent in written notice that it would not be participating in the hearing. Claimant's Exhibits A through G and Department's Exhibit D-1 were received and admitted into the record. Laotian/English interpreter Charles (ID number 21210) provided interpretation services for the initial telephonic conference. Laotian/English interpreters Bidur (ID number 9811) and Sam (ID number LSAM) provided interpretation services for the in-person hearing.

ISSUES:

Is the appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a catering employee for special functions, from July 15, 2002, until October 20, 2017, when she moved to PRN status. Claimant moved to PRN status because she had sustained a work-related injury and was concerned about getting injured again. Claimant was injured in August 2017. She began seeing a doctor and going to physical therapy to heal her injury. Claimant was given a lifting restriction by the doctor. When she returned to work, claimant asked that the employer provide her with assistance so she would not have to work alone and do all the lifting herself. The employer sent someone to help her, but it was just for a short period of time. Thereafter, claimant was forced to work alone with her injury. On October 10, claimant submitted a letter resigning from her full-time position. Claimant believed that moving to PRN status would lessen her physical strain.

The unemployment insurance decision was mailed to the appellant's address of record on June 1, 2018. The appellant did not receive the decision. The first notice of disqualification was the unemployment insurance decision dated August 22, 2018 (reference 03). The appeal was sent within ten days after receipt of that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant quit her full-time position with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

The first issue is whether claimant filed a timely appeal. The administrative law judge determines it is.

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 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 appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Claimant credibly testified during the hearing that she never received the unemployment insurance decision dated June 1, 2018 (reference 02). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant erroneously appealed the unemployment insurance decision favorable to her (reference 03) in a timely manner. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant quit her employment with good cause attributable to the employer. Iowa Code section 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.26(6)b 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:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The evidence presented during the hearing indicates claimant sustained a work-related injury. Claimant came to the employer with work restrictions and an accommodation request, and the employer was not willing to accommodate the work restrictions. Therefore, benefits are allowed, provided claimant is otherwise eligible. The issue of whether claimant is presently able to work, available for work, and actively and earnestly seeking work is remanded for further investigation.

DECISION:

The June 1, 2018 (reference 02) unemployment insurance decision is reversed. Claimant quit the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of whether claimant is presently able to work, available for work, and actively and earnestly seeking work is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn