

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE NICHOLS
Claimant

TMONE LLC
Employer

APPEAL 22A-UI-05025-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 27, 2022, (reference 05) unemployment insurance decision that denied benefits based upon her voluntary resignation on November 4, 2020. The parties were properly notified about the hearing. A telephone hearing was held on April 1, 2022. The claimant participated and testified. The employer did not participate. The administrative law judge took official notice of the agency records.

ISSUES:

Whether the claimant's appeal is untimely?

Whether there are reasonable grounds to find it otherwise timely?

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

Whether the claimant was able and available for work after her separation?

FINDINGS OF FACT:

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

The claimant was employed full-time as a telephone sales agent from November 2, 2020, until she was separated from employment on November 4, 2020, when she quit.

The claimant would be selling Sirius XM satellite radio subscriptions. The claimant took the position because it was advertised that she would be training for a week in-person and then she would be working remotely from her home. During her training, the claimant learned that it would take five to six months for the claimant to be able to work from home. In the meantime, the claimant would be required to work the floor with many other sales agents. The claimant

was later told that the advertisement referenced above was based on another program and she was not in the one that would be allowed to work remotely.

The claimant quit because she has asthma, heart disease, diabetes and colitis, which make her more likely to be injured or die from a Covid19 infection. The claimant did not have a directive from her physician stating these conditions made it advisable to remain out of the public during the pandemic. The claimant is also 50 years old. At the time, there were not vaccinations available. Employees were required to wear masks.

On September 28, 2021, the claimant was arrested for driving while intoxicated. The claimant remained in jail until she was sentenced on December 1, 2021. The claimant was transferred to a holding area called the Anchor Center on January 20, 2021.

The following section describes the findings of facts that are necessary to resolve the timeliness issue:

A disqualification decision was mailed to claimant's last known address of record, 3340 Henderson Ave Southeast in Cedar Rapids, Iowa on January 27, 2022. (Exhibit D-1) The claimant did not receive the decision within ten days because she was being housed in the Anchor Center at 3115 12th Street Southwest in Cedar Rapids Iowa 52404. The claimant had her daughter check her mail at her address every week and a half. The claimant did not re-route her mail because she was not sure how long she would be at the Anchor Center. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 6, 2022. The appeal was not filed until February 21, 2022, which is after the date noticed on the disqualification decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received within the appeal period. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed the decision as soon as she received it.

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.

Iowa Admin. Code r. 871-24.25 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:

(27) The claimant left rather than perform the assigned work as instructed.

Iowa Admin. Code r. 871-24.26(23) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant acknowledges she quit.

Misrepresentation of Work Assignment

The administrative law judge concludes the claimant cannot show her quit was with good cause due to misrepresentation of the work assignment. That is because the claimant appears to have been mistaken about the advertisement she responded to. Even if the advertisement was for this particular program, the administrative law judge concludes that the type of work was not misrepresented to the claimant. She would still be performing sales work. Merely extending the amount of time that she would have to work onsite is not a transformation in the type of work performed.

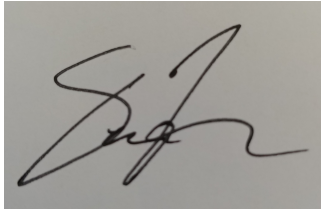
Intolerable Working Conditions

The claimant also contends she quit due to intolerable working conditions. Essentially, claimant contends her age and medical conditions forced her to resign after she heard she would have to work on site. The administrative law judge concludes the claimant cannot meet this threshold because she concedes the employer had a requirement for employees to wear masks. The claimant was unaware of other infection mitigation strategies the employer was using. The claimant quit before she could obtain more information. While she was not required to internally express these concerns to the employer per se, the claimant's resignation after being in training for two days is not reasonable.

The claimant cannot show that her quit was attributable to her employer. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied. Since the claimant's resignation is disqualifying, the issue regarding whether she was able and available for work after her separation is moot.

DECISION:

The January 27, 2022, (reference 05) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue regarding whether the claimant was able and available is moot because her separation is disqualifying.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 725-9067

April 21, 2022
Decision Dated and Mailed

smn/kmj