

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA M VAN BEEK

Claimant

APPEAL NO. 23A-UI-09132-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 07/02/23

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On September 26, 2023, Angela Van Beek (claimant) filed a late appeal from the August 9, 2023 (reference 01) decision that disqualified her for benefits and that held the employer account of Casey's Marketing Company would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on April 19, 2023 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 11, 2023. Claimant participated. The employer did not comply with the hearing notice instructions to call the toll-free number at the time of the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 23A-UI-09133-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: the reference 01 and 02 decisions, DBRO, KCCO, KFFV, WAGEA, and the notice of claim and response pertaining to Polaris Industries, Inc (275759).

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely. Whether the claimant voluntarily quit the Casey's employment without good cause attributable to that employer.

FINDINGS OF FACT:

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

Angela Van Beek (claimant) established an original claim for unemployment insurance benefits that was effective July 2, 2023. Iowa Workforce Development set the weekly benefit amount at \$659.00. At the time the claimant established her claim for benefits, she was employed with, but temporarily laid off from, full-time employment at Polaris Industries, Inc. (employer account number 275759). The claimant made a weekly claim for the week that ended July 8, 2023 and then discontinued her claim for benefits in connection with her July 10, 2023 return to the full-time Polaris employment. The claimant received \$659.00 in benefits for the week that ended July 8, 2023.

When the claimant applied for unemployment insurance benefits, she provided the address for her home in Sandborn, Iowa as the address to which Iowa Workforce Development should direct correspondence. The United States Postal Service delivers mail to a mailbox at the claimant's home. The claimant resides with her teenage sons, ages 17, 18 and 19. The claimant or her middle son usually collect the mail and place it on a kitchen island. The claimant has ongoing issues with receiving her mail in a timely manner.

The claimant's base period wages and wage credits are based on full-time employment with Polaris and part-time, supplemental employment with Casey's Marketing Company (employer account number 262054).

The claimant was employed by Casey's as a part-time cashier from October 2022 until April 11, 2023, when she voluntarily quit. The part-time Casey's employment supplemented the claimant's full-time employment with Polaris. Until the last two weeks of the Casey's employment, the claimant averaged three shifts per week, and 15-hours per week. The claimant's shifts generally started at 5:00 p.m. and ended at 10:15 p.m. During the last two weeks of the Casey's employment, the claimant's supervisor, Store Manager Trisha Abbott, reduced the claimant to one shift per week, which offered about five hours of work. The claimant had not changed her availability for work with the employer. The employer moved two of the claimant's three weekly shifts to other employees. The claimant had not changed her work availability schedule and requested additional work hours. The Casey's employment paid \$14.50 an hour. At the same time Casey's cut the claimant's work hours, the claimant was aware that Polaris was offering optional Saturday overtime work. The Polaris employment paid \$21.06. The claimant elected to end the Casey's employment and to add overtime hours to the full-time Polaris employment. On April 11, 2023, the claimant notified Casey's she had worked her last day and that the employer needed to find coverage for her next shift set during the following week.

On August 9, 2023, Iowa Workforce Development mailed the August 9, 2023 (reference 01) decision to the claimant's last-known address of record. The reference 01 decision disqualified the claimant for benefits and held the employer account of Casey's Marketing Company would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on April 19, 2023 without good cause attributable to the employer. The reference 01 decision stated the decision would become final unless an appeal was postmarked by August 19, 2023 or was received by the Appeals Section by that date. The decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. August 19, 2023 was a Saturday and the next working day was Monday, August 21, 2023. The claimant did not receive the reference 01 decision and, therefore, was unaware of the applicable appeal deadline. The claimant did not take steps to file an appeal from the decision by the appeal deadline.

On September 5, 2023, IWD mailed the September 5, 2023 (reference 02) decision to the claimant's address of record. The reference 02 decision held the claimant was overpaid \$659.00 in benefits for the week that ended July 8, 2023, due to the earlier decision that had disqualified her for benefits in connection with the quit from Casey's. The reference 02 decision stated the decision would become final unless an appeal was postmarked by September 15, 2023 or was received by the Appeals Section by that date. The claimant did not receive the reference 02 decision until Saturday, September 23, 2023. Accordingly, the claimant had been unaware of the September 15, 2023 appeal deadline until after she received the reference 02 decision on September 23, 2023. The claimant did not take steps to file an appeal from the reference 02 decision by the September 15, 2023 deadline.

On Monday, September 25, 2023, the claimant called Iowa Workforce Development customer service in response to receiving the reference 02 decision. The claimant mentioned her receipt of the overpayment decision and the September 15, 2023 appeal deadline. The IWD representative advised the claimant to file an appeal.

On September 26, 2023, the claimant completed and transmitted an online appeal from the reference 02 decision. The Appeals Bureau received the appeal on September 26, 2023 and treated it as also a late appeal from the reference 01 decision.

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. IDS*, 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes good cause to treat the September 26, 2023 as a timely appeal from the August 9, 2023 (reference 01) decision. The claimant did not receive the reference 01 decision. The claimant became aware of the decision on September 23, 2023 and filed an appeal within three days of receiving the decision. The late filing of the appeal is attributable to the United States Postal Service. Because the appeal was timely, the administrative law judge has jurisdiction to rule on the merits of the appeal from the reference 01 decision. 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:

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). 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. See 871 IAC 24.25.

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record establishes an April 11, 2023 voluntary quit that was for good cause attributable to Casey's Marketing Company. The claimant quit in response to a substantial change in the established conditions of the employment, whereby the employer reduced the claimant's work hours and wages by two-thirds. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claimant's appeal from the August 9, 2023 (reference 01) decision was timely. The reference 01 decision is REVERSED. The claimant voluntarily quit the Casey's employment with good cause attributable to the employer and based on a change in the contract of hire. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.



James E. Timberland
Administrative Law Judge

October 12, 2023
Decision Dated and Mailed

JET/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.