

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARIA G TRUJILLO**  
Claimant

**SEABOARD TRIUMPH FOODS LLC**  
Employer

**APPEAL 20A-UI-05704-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Maria Trujillo (claimant) appealed a representative's May 29, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with Seaboard Triumph Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 8, 2020. The claimant participated personally through Interpreter Christian. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner, whether the claimant was separated from employment for any disqualifying reason, and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 9, 2019, as a full-time production worker. The claimant's daycare stopped providing services due to the pandemic. The claimant stopped appearing for work on or about April 26, 2020.

The claimant provided her own childcare until June 19, 2020. On June 19, 2020, the claimant started new full-time employment at Smithfield. She found a new childcare provider.

A disqualification decision was mailed to the claimant's last known address of record on May 29, 2020. The decision was received by the claimant within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 8, 2020. The appeal was not filed until June 10, 2020, which is after the date noticed on the

disqualification decision. The claimant filed two days late because her first language is Spanish and it was not easy to read and respond to the decision. She also had issues finding a computer to use in the pandemic.

The claimant filed for unemployment insurance benefits with an effective date of April 19, 2020. Her weekly benefit amount was determined to be \$245.00. The claimant has not received any state unemployment insurance benefits or federal pandemic unemployment compensation.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant filed a timely appeal.

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 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. Board 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. 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 record shows that the appellant did not have a reasonable opportunity to file a timely appeal. The claimant filed an appeal as soon as she could. The appeal shall be considered timely.

Next, the administrative law judge finds the claimant voluntarily quit work without good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.25(17) 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:

- (17) The claimant left because of lack of child care.

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's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant stopped appearing and quit work. When an employee quits work to take care of a child, the leaving is without good cause attributable to the employer. The claimant left during the pandemic to provide her own childcare. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant is able and available for work.

Iowa Admin. Code r. 871-24.23(8) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

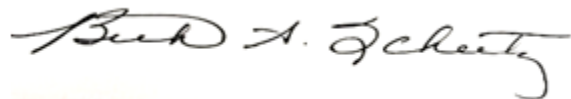
When an employee is spending working hours caring for children, she is considered to be unavailable for work. During the pandemic, the claimant lost her childcare. She devoted her time and efforts to childcare. She is considered to be unavailable for work during this time.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

**DECISION:**

The May 29, 2020, reference 01, decision is affirmed. The appeal in this case was timely. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant’s weekly benefit amount provided the claimant is otherwise eligible. The claimant is not able and available for work.

*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 currently 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>.



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Beth A. Scheetz  
Administrative Law Judge

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July 16, 2020  
Decision Dated and Mailed

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