

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY MCELHENNY
Claimant

APPEAL 21A-UI-19037-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATHOLIC HEALTH INITIATIVE IS IOWA
Employer

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

Iowa Code §96.6(2) – Timely Appeal
Iowa Code §96.5(2)a – Discharge for Misconduct
Iowa Code §96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Ashley McElhenny, the claimant/appellant, filed an appeal from the December 23, 2020, (reference 03) unemployment insurance (UI) decision that denied benefits based on an April 19, 2020 voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on October 21, 2021. Ms. McElhenny participated and testified. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. McElhenny's appeal filed on time?
Did Ms. McElhenny voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. McElhenny at the correct address on December 23, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by January 2, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. January 2, 2021 was a Saturday; therefore, the deadline was extended to Monday, January 3, 2021.

Ms. McElhenny did not receive the decision in the mail. IWD issued four additional decisions, all dated August 20, 2021, finding Ms. McElhenny was overpaid REGULAR UI benefits (reference 04), Pandemic Emergency Unemployment Compensation (PEUC) benefits (reference 05), Federal Pandemic Unemployment Compensation (FPUC) benefits (reference 06), and Lost Wage Assistance Payments (LWAP) benefits (reference 07). Ms. McElhenny received at least one of those decisions. Ms. McElhenny contacted IWD and asked about her eligibility for benefits. The representative told her about the reference 03 decision and the IWD decision dated October 9, 2020 (reference 02) that also denied benefits, and mailed a copy of

those decisions to Ms. McElhenny. Ms. McElhenny filed an appeal online on August 27, 2021. The appeal was received by Iowa Workforce Development on August 27, 2021.

The administrative law judge further finds: Ms. McElhenny began working for the employer in October 2019. She worked as a full-time phlebotomist.

Ms. McElhenny took a 30-day leave of absence from April 19, 2020 through May 19, 2020 because her children's schools closed and no one was available to care for her children. The employer told Ms. McElhenny that if she did not return to work on Wednesday, May 20, the employer would consider her to have quit. Ms. McElhenny was not able to return to work on May 20. She was able to return to work on Monday, May 25. Ms. McElhenny found coverage for her scheduled shifts from May 20 through Friday, May 22. Ms. McElhenny told the employer that she could not return to work until May 25, but that she had found coverage for scheduled shifts. The employer disapproved Ms. McElhenny's request to have other employees cover her shift and told her that if she did not return to work on May 20 the employer will consider her to have voluntarily quit. Ms. McElhenny could not, and did not, attend work from May 20 through May 22 because she had to care for her children.

Ms. McElhenny called the employer on Monday, May 25 to ask about returning to work. The employer told Ms. McElhenny that she had quit so her employment was over. Ms. McElhenny told the employer that she did not quit; she just could not return to work on May 20.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. McElhenny's appeal of the reference 03 decision was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

Ms. McElhenny did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. When Ms. McElhenny learned that she had been denied benefits, she appealed. Ms. McElhenny's appeal was filed on time.

The administrative law judge further concludes: Ms. McElhenny's separation from employment was without good cause attributable to the employer.

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(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.

The 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).

In this case, Ms. McElhenny's employment ended due to lack of childcare. The employer warned her that if she did not return to work on May 20 she would be considered to have quit. Ms. McElhenny could not, and did not, return to work. Ms. McElhenny did what she needed to do for her family. However, her leaving was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

Even though Ms. McElhenny is not eligible for regular unemployment insurance benefits, 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 up to the \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation (FPUC) program if they are eligible.

DECISION:

Ms. McElhenny's appeal was filed on time. The December 23, 2020 (reference 03) decision is affirmed. Ms. McElhenny 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.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

November 02, 2021
Decision Dated and Mailed

dz/ol

NOTE TO MS. MCELHENNY:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.

- If you do not qualify for regular unemployment insurance benefits under state law and you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **You can still apply for PUA benefits at the link above if your initial claim for benefits was filed before June 12, 2021.** Your initial claim for benefits was filed on April 19, 2020.