

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

CARLA M KRITENBRINK
Claimant

LOWE'S HOME CENTERS LLC
Employer

APPEAL 24A-UI-04322-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/03/24
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On May 2, 2024, claimant Carla M. Kritenbrink filed an appeal from the April 3, 2024 (reference 02) unemployment insurance decision that denied benefits, determining claimant voluntarily quit her employment on November 16, 2023 for personal reasons. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on May 6, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 9:00 a.m. on Friday, May 17, 2024. Claimant Carla M. Kritenbrink participated. Employer Lowe's Home Centers LLC participated through Raven Tatum, Store Manager. No exhibits were offered by the parties. Department's Exhibit D-1, the reference 02 decision, was admitted into the record.

ISSUE:

Did the claimant file a timely appeal? Is there good cause to treat the claimant's appeal timely?
Did the claimant voluntarily quit the employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Lowe's Home Centers LLC on September 23, 2023. She worked part-time hours as a cashier. Claimant's employment ended on November 16, 2023 when she quit. The employer had continued work available for her, had claimant not voluntarily ended her employment.

Claimant last reported to work on November 9, 2024. The following morning around 5:00 a.m., she went to the hospital where she was diagnosed with pneumonia and where she stayed for six days for medical treatment. Claimant called in sick on November 12 and November 13, notifying the employer that she would not be at work because she was in the hospital. After claimant was released from the hospital on November 16, she contacted the employer again. She spoke with Patty, the staffing and scheduling admin, and she told Patty that she was quitting her job.

Claimant quit her position for two reasons. First, her doctor had put her on oxygen after being in the hospital, and she did not have a portable oxygen tank that would allow her to leave the

house and go to work. Second, claimant was planning to move to Nebraska, and once she moved she would no longer be in the vicinity of the Sioux City store. The employer agreed with claimant that there would not be a need for claimant to come back to work now that she was out of the hospital because she was going to be moving out of state.

The decision finding claimant was denied benefits based on her separation from Lowe's Home Centers LLC was mailed to claimant's last known address of record on April 3, 2024. She did receive the decision within ten days, sometime prior to the appeal deadline. The first sentence of the decision states, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment which you will be required to repay." The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 13, 2024.

Claimant was bedridden with illness for multiple weeks and was not able to appeal until May 2, 2024. She does not have a computer at home and had no way of filing an appeal from home. Claimant gets her mail at a box at the post office, and she is the only person in her household who can drive to the post office and either mail letters or retrieve the mail. Once claimant was healthy enough to leave the house, she went to the Council Bluffs IowaWorks office and filed her appeal online.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant quit without good cause attributable to the employer.

As an initial matter, I must determine whether claimant filed a timely appeal. 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(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 parties have a duty to appeal representatives' decisions within the time allotted by statute; 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 claimant received the decision prior to the appeal deadline. However, she had to either travel back to the post office and mail an appeal or travel to Council Bluffs to submit an appeal online. Before claimant could take either of those steps, she got sick and became unable to leave her home. Therefore, I find she did not have an opportunity to appeal the fact-finder's

decision until after the deadline had passed. The claimant filed an appeal as soon as she recovered and could leave her home. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is entitled to benefits based on the separation. Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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). The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

Where a claimant gives numerous reasons for leaving employment the agency is required to consider all stated reasons which might combine to give the claimant good cause to quit in determining any of those reasons constitute good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985).

Iowa Admin. Code r. 871-24.25(2), (20), and (35) provide:

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:

(2) The claimant moved to a different locality.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

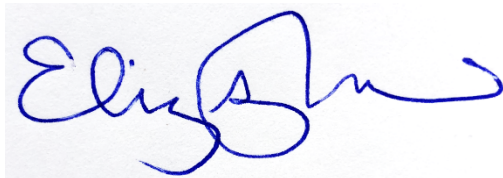
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

Claimant's conversation with Patty is evidence of her intention to sever the employment relationship and an overt act of carrying out her intention. The parties agree that claimant voluntarily quit her employment. Claimant provided two reasons for quitting her job. The administrative law judge has considered both of them and finds that neither constitutes good cause attributable to the employer.

While claimant's pneumonia-related reason for not returning to work makes sense, it is not a good-cause reason fairly attributable to the employer. Similarly, while claimant and the employer agreed that it would make sense for her to leave her employment in anticipation of her move out of state, moving out of state is not a good-cause reason to quit that the employer is responsible for in any way. Claimant has not met her burden of proving she voluntarily quit her employment for good cause attributable to employer. Benefits are denied.

DECISION:

The April 3, 2024 (reference 02) unemployment insurance decision is affirmed. Claimant quit the employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

May 21, 2024
Decision Dated and Mailed

lj/scn

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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.