IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHANDA RYDL Claimant **ROYAL FLOORING AND PAINTS OF** Employer	**APPEAL NO. 20A-UI-12644-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/09/20** **Claimant: Appellant (2)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On October 14, 2020, claimant filed an appeal from the September 28, 2020, decision that denied her benefits because she voluntarily quit. After due notice was issued, a hearing was held on December 3, 2020. Claimant participated. Human Resources Generalist Molly Wilson represented the employer. The administrative law judge took official notice of the administrative record.

ISSUES:

1. Whether the claimant filed a timely appeal? Whether there is good cause to treat the appeal as timely?

2. Whether the claimant's voluntary quit was for good cause attributable to the employer?

FINDINGS OF FACT:

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

The employer has a sexual harassment policy in its handbook which informs employees to bring their complaints to the attention of human resources.

Claimant worked as a full time executive personal assistant for the employer from February 1, 2019 to August 7, 2020. Claimant worked an average of 34 hours per week. Claimant reported directly to Partner Scott Sullivan. Scott Sullivan and two other partners, Johnnie Kennel and Nick Fiala, own the employer. Prior to working for this employer, claimant worked for Scott Sullivan under a different arrangement for two years.

For the two years prior to this term of employment, claimant worked for Scott Sullivan under a different employment arrangement. In particular, claimant remembers contractors talking about how her buttocks looked and made a series of other inappropriate statements to her. Claimant

did not think she could report these concerns at the time because she did not yet have a formal employment relationship.

On a Saturday in July 2020, Scott Sullivan asked claimant to call him. The previous night, claimant had received several messages from Scott Snider's fiancé accusing her of having adultery with him. Scott Sullivan explained that he and John Snider had been joking on Friday night that John Snider and claimant had been sleeping together in flip houses. Then John Snider's fiancé believed the joke and sent numerous disparaging messages to claimant on Facebook. John Snider is an independent contractor who also works for Scott Sullivan.

In July 2020, claimant called Ms. Wilson and explained the issue regarding John Snider's joke about the two of them sleeping together in properties. Ms. Wilson believed claimant's allegations. However, Ms. Wilson explained that since John Snider is not an employee of Royal Flooring, she could not do anything. Wilson advised her to have a conversation with Scott Sullivan. Claimant did not report other inappropriate behavior to Ms. Wilson.

On August 7, 2020, claimant sent a text message to Scott Sullivan that she could not continue to work like this. Claimant explained that the rumors springing from the joke John Snider and Scott Sullivan shared in July 2020 were too much for her to endure. Scott Sullivan initially replied that if that is the way claimant felt, then she would not be working for the employer anymore.

On August 7, 2020, Scott Sullivan sent another text message to claimant requesting to meet on August 11, 2020 to talk about it. Johnnie Kennel turned off claimant's email and phone over the weekend between August 7, 2020 and August 11, 2020.

On August 11, 2020, claimant met with Scott Sullivan, Johnnie Kennel, and John Snider. Ms. Wilson was not made aware of the meeting nor did she attend it. Ms. Wilson does believe that this meeting occurred.

Ms. Wilson contends the employer terminated claimant's employment on August 2, 2020. Ms. Wilson said Scott Sullivan, Johnnie Kennel and Nick Fiala made the decision to terminate claimant because she was not performing enough work for the benefit of the employer. Ms. Wilson said she was not familiar enough with claimant's duties to explain the reason for claimant's termination. Ms. Wilson explained there was a "gray area because [claimant] was Scott Sullivan's assistant." Ms. Wilson did not play a part in the decision to terminate claimant.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 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 have a reasonable opportunity to file an appeal postmarked as timely.

Claimant credibly testified she sent in her appeal letter on October 7, 2020. The administrative law judge concludes that failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Since the claimant's appeal is timely, the administrative law judge will continue to the merits of the claim for unemployment insurance benefits.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

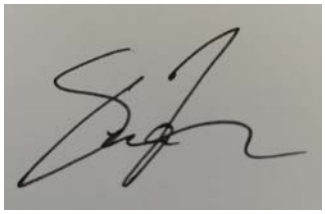
Claimant and Ms. Wilson agree that claimant reported concerns regarding John Snider's inappropriate behavior in July 2020. Ms. Wilson told claimant nothing could be done because John Snider is an independent contractor. Ms. Wilson told claimant that she should report her concerns to Scott Sullivan, the other man who joked about her having sex with John Snider. In the face of these circumstances and a long history of enduring inappropriate statements, a reasonable person would quit their employment. Claimant quit the employment for good cause

attributable to the employer. Accordingly, claimant is eligible for benefits, provided she is otherwise eligible.

The employer maintains that claimant did not quit, but was discharged for poor performance. Even if claimant's separation from employment was properly characterized as a termination, the employer would have the burden of persuasion to show it terminated claimant for misconduct. *See* Iowa Code § 96.5(2)a. Ms. Wilson cannot meet employer's burden because she was not part of the decision to terminate claimant's employment and cannot credibly explain how it was due to disqualifying misconduct. The employer's account may be charged for benefits paid to claimant.

DECISION:

The agency representative's decision dated September 28, 2020, reference 01, is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

December 31, 2020
Decision Dated and Mailed

smn/scn