

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA K CHASE

Claimant

SHERRIE C HANSEN

Employer

APPEAL 21R-UI-11748-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20

Claimant: Appellant (2R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.22(2)(i)(1) – Eligibility – On-call workers
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 7, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 19, 2021. Claimant participated. Employer did not participate. On March 1, 2021, a decision was issued on the merits in appeal 21A-UI-01527-JC-T.

On April 21, 2021, employer appealed to the Employment Appeal Board (EAB). On April 27, 2021, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on July 14, 2021 at 2:00 p.m. Claimant participated. Employer participated through Sherri Hansen, Owner. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

Whether claimant is an on-call worker.

Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on July 7, 2020. Claimant received the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 17, 2020. Claimant appealed the decision online on July 9, 2020. Iowa Workforce Development (IWD) did not receive the appeal. Claimant realized the error when she received a subsequent overpayment decision. Claimant refiled her appeal via mail on December 18, 2020 as evidenced by the postmark. Claimant's appeal was received by Iowa Workforce Development.

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time Housekeeper from August 2019 until her employment with Sherrie Hansen (a bed and breakfast) ended on March 18, 2020.

When hired, claimant was told that she would average 15 – 20 hours per week. Claimant's work schedule varied depending on business needs. Employer informed claimant of the work that needed to be performed on a daily basis via text message.

On March 18, 2020, employer sent claimant a text message stating that guests had cancelled and there were no reservations until May 2020. Claimant replied to employer that she would file for unemployment benefits due to reduction in work. Employer interpreted claimant's statement about applying for unemployment benefits as a resignation. Claimant had no intention of quitting her employment. Employer did not reply to claimant's text message about applying for unemployment benefits. Employer did not notify claimant of any future work that she could perform. Employer and claimant had no further contact.

Employer's guest cancellations were a direct result of Covid-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal was timely.

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). 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).

Claimant received the decision and submitted her appeal online prior to the deadline. Iowa Workforce Development did not receive claimant's appeal. The delay was due to division error. Claimant's appeal is considered timely.

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit her employment; claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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). Where there is no expressed intention or act to sever the employment relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, claimant had no intention of terminating her employment relationship with employer. Claimant merely informed employer that she would apply for unemployment benefits due to the reduction in work. This was not evidence of an intention to terminate employment. Because claimant did not voluntarily quit her job, claimant's separation from employment must be analyzed as a discharge.

Iowa Code section 96.5(2)(a) provides:

An individual shall be *disqualified for benefits*:

2. *Discharge* for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the

employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Employer terminated claimant's employment or laid claimant off by not contacting her to perform any additional work as was the parties' custom. There is no evidence of misconduct by claimant. Therefore, claimant's separation is not disqualifying. Benefits are allowed provided claimant is otherwise eligible.

The issue of whether the employer will be charged for regular, state-funded unemployment insurance benefits paid due to Covid-19 will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to Covid-19.

DECISION:

The appeal is timely. The July 7, 2020 (reference 02) unemployment insurance decision is reversed. Claimant did not voluntarily quit her employment; claimant was discharged or laid off for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

REMAND:

The issue of whether employer should be charged for the unemployment insurance benefits paid to claimant because of Covid-19 is remanded to the Tax Bureau of Iowa Workforce Development for a determination.



Adrienne C. Williamson
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July 30, 2021
Decision Dated and Mailed

acw/scn