

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSE M SAMPLES
Claimant

APPEAL 21A-UI-03652-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 04/26/20
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 January 23, 2021, the claimant, Rose M. Samples, filed an appeal from the July 14, 2020 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held on Wednesday, March 17, 2021. The claimant, Rose M. Samples, participated. The employer, Menard, Inc., participated through Kyle Himan, First Assistant General Manager. No exhibits were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Did claimant Rose M. Samples file a timely appeal?

Did claimant Rose M. Samples quit her employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a morning stocker, beginning sometime in 2008.

As a response to the COVID-19 pandemic, the employer instituted a mandatory mask-wearing policy for both employees and customers effective late April 2020. The employer began notifying employees about this policy prior to implementing it.

Claimant told the employer that she was not able to wear a mask because of medical reasons. Claimant has one collapsed nostril and a heart condition, and she has trouble breathing when wearing a mask. The employer gave her three options: (1) wear a mask and continue working; (2) take a leave of absence; (3) have the employer terminate her employment. While claimant would have preferred to continue working, she was not able to work and comply with the mask mandate. Therefore, she opted for a leave of absence, as this was the only option that allowed her to remain employed.

Claimant's leave of absence lasted until June 26, 2020. At that point, she attempted to return to work. However, she felt harassed in her work environment. People kept asking her, "Where's your mask?" Additionally, things were out of place from when she last worked, and she had to spend considerable time fixing things. Finally, claimant's husband was ill and she needed to spend her time caring for him. Therefore, she submitted her resignation on July 4, 2020. Continued work was available, had claimant not opted to quit.

The unemployment insurance decision was mailed to the claimant's address of record on July 14, 2020. The appellant did not receive the decision. The first notice of disqualification was when claimant received the overpayment decision dated January 20, 2021. The appeal was sent within ten days after receipt of that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer.

As an initial matter, the administrative law judge determines claimant timely filed her 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(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).

Here, claimant did not receive the decision in the mail and, therefore, could not file an appeal prior to the appeal deadline. The notice provision of the decision was invalid. Claimant first learned that she was not eligible for benefits when she received the overpayment decision in January 2021, and she immediately filed her appeal. Therefore, this appeal will be accepted as timely filed.

The next issue is whether claimant's separation is without good cause attributable to the employer. Iowa Code §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 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: ...

(6) The claimant left as a result of an inability to work with other employees.

(22) The claimant left because of a personality conflict with the supervisor.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

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).

Here, claimant testified about three reasons leading to the end of her employment. First, claimant contends she was harassed about not wearing a mask. While claimant was frustrated with the employer requiring her to wear a mask in the store and she strongly disliked being asked where her mask was, the administrative law judge does not find that the questions she experienced rise to the level of harassment that would drive the average person to end their employment. Second, claimant stated she left her employment because when she returned, everything was out of order. Things understandably changed at the store after claimant went on

her leave of absence, and disarray in a retail store is not a reasonable cause to end employment. Third, claimant left her employment because her husband was ill and she needed to care for him. This was certainly understandable. However, this is not a good cause reason that is fairly attributable to the employer.

While claimant's leaving the employment may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The July 14, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld from her date of separation (July 4, 2020) 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.



Elizabeth A. Johnson
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March 19, 2021
Decision Dated and Mailed

lj/ol