

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DANIELLE VASTINE**  
Claimant

**BOTTLING GROUP LLC**  
Employer

**APPEAL 21A-UI-20681-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/04/21  
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 28, 2021, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on November 8, 2021. The claimant participated and testified. The employer did not participate. Exhibits D-1, D-2, A, B and C were received into the record.

**ISSUES:**

Whether the claimant's appeal is timely? Whether there are reasonable grounds to consider her appeal otherwise timely?

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

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

The claimant was employed full-time as a payroll administrative assistant from July 21, 2020, until she was separated from employment on January 13, 2021, when she was discharged.

On November 11, 2020, the claimant experienced symptoms of Covid19. She had been living with two individuals who tested positive for Covid19. As a result, the claimant was placed on quarantine by the employer for two weeks with the claimant's expected return date being November 25, 2020. Prior to her scheduled return date, the claimant fell down the stairs which caused a serious injury to her shoulder. The claimant's arm felt numb such that she could not feel her fingers and had difficulty lifting anything.

On November 25, 2020, the claimant reported her shoulder injury to Human Resources Manager Jeff Larson. Mr. Larson directed the claimant to apply for short-term disability.

On December 10, 2020, the claimant wrote an email to Human Resources Generalist Jeffrey Fowler, informing him that that she had not heard back from Mr. Larson. She said that the records showed that she was placed on short-term disability effective November 25, 2020. She clarified that she used paid time off for shifts occurring on November 25, 2020 and November 27, 2020 and worked from November 29, 2020 through December 1, 2020. The claimant also informed Mr. Fowler that the human resources claims center had not yet received correct leave dates with her leave beginning on December 1, 2020. Mr. Fowler said he would follow up on these discrepancies. The claimant provided a copy of this email. (Exhibit B) The claimant never received clarification.

On January 8, 2021, the claimant wrote a text message to Mr. Larson stating that they had not received the correct dates from him to finish her short-term disability claim.

On January 13, 2021, the claimant was terminated by the employer. She did not become aware that she had been terminated until the end of April 2021, when she was told her medical insurance had been turned off.

The claimant called Mr. Larson on January 19, 2021, February 9, 2021, February 24, 2021, March 5, 2021, March 15, 2021 and March 26, 2021. The claimant provided call records confirming these attempts to contact Mr. Larson. (Exhibit C)

The claimant stopped experiencing symptoms of her injury in February 2021. She has since been looking for administrative, human resources and customer service roles.

A disqualification decision was mailed to the claimant's address of record on June 28, 2021. (Exhibit D-1) The claimant did not receive the decision because she had moved to another location. The claimant became homeless, so she did not have an address to redirect her mail to. The claimant became aware of her disqualification when a representative informed her on September 16, 2021. The appeal was sent on September 17, 2021, after receiving that news. (Exhibit D-2)

## **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a

voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed when she was informed of disqualification by a representative of the agency. Therefore, the appeal shall be accepted as timely.

Iowa Code section 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. In February 2021, the claimant offered services to the employer after recovering from the injury. The employer did not respond in any way. Suitable work was not available at that time.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes is available for work.

wa Admin. Code r. 871-24.23(1) provides:

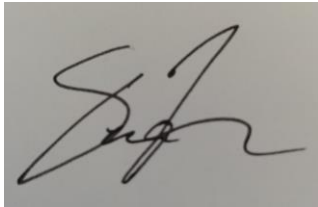
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant credibly testified that the symptoms of her illness diminished such that she could work beginning in February 2021. The claimant was able and available for work when she filed her claim on April 10, 2021. Benefits are granted, provided she is otherwise eligible.

**DECISION:**

The July 28, 2021, (reference 01) unemployment insurance decision is reversed. The claimant left her employment with the consent of the employer and returned when she was recovered, but work was not provided to her. The claimant was able and available for work when she filed her claim. Benefits are granted, provided she is otherwise eligible.



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Sean M. Nelson  
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December 30, 2021  
Decision Dated and Mailed

smn/mh