

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELIZABETH LANDON
Claimant

MADISON RAMIREZ
Employer

APPEAL 21A-UI-03886-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code section 96.5(1)a – Voluntary Quitting for Other Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 13, 2020, reference 02, 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 March 19, 2021. Claimant participated and testified. The employer did not participate. The administrative law judge took official notice of the agency records. Exhibits D-1 and D-2 were admitted into the record. This case was heard at the same time as 21A-UI-03887-SN-T.

ISSUES:

1. Whether the claimant's appeal was timely filed? Whether there are reasonable grounds to consider it timely?
2. Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

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

The claimant was employed as a full-time caretaker for the employer, Madison Ramirez, from November 2018, until October 14, 2019, when she quit. The claimant's immediate supervisor was Megan Ramirez.

On September 30, 2019, the claimant told Megan Ramirez she was going to resign from her position effective October 14, 2019. The claimant had received a firm job offer from OSL Retail Services Inc. The claimant began working for OSL Retail Services Inc. on October 17, 2019.

A disqualification decision, reference 02, was mailed to the claimant's address of record on July 14, 2020. (Exhibit D-1) The claimant did not receive the decision. The first notice of disqualification was the overpayment decision on January 20, 2021, reference 03. The appeal was sent by fax six days after receipt of that decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely, but has reasonable grounds to be considered timely. He further concludes the claimant is eligible to receive unemployment insurance benefits after separation from work.

The first issue to determine is the timeliness of the claimant's appeal.

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

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 the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue to decide is whether the claimant's quit was without good cause attributable to the employer.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

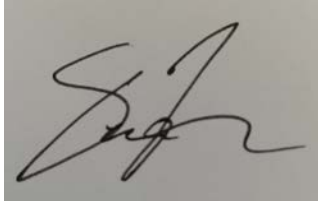
1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left her position with the employer to work for another employer. When an employee quits work to take other employment, she is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. She voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged.

DECISION:

The representative's July 13, 2020 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. The claimant is not disqualified from receiving unemployment insurance benefits because she quit to take other employment. The employer will not be charged.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

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

March 29, 2021
Decision Dated and Mailed

smn/scn