

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATTI OLDHAM

Claimant

APPEAL 17A-UI-07695-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILLIAM PENN UNIVERSITY

Employer

OC: 06/25/17

Claimant: Respondent (1-R)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work

Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the July 20, 2017 (reference 09) unemployment insurance decision that dealt with reported vacation pay. However, the employer's appeal was considered an appeal from the July 18, 2017 (reference 01) unemployment insurance decision that allowed benefits based on a decision that claimant did not quit but was discharged for no disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on August 15, 2017. The claimant, Patti Oldham, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, William Penn University, participated through Bonnie Johnson, Vice President of Finance; and was represented by Tara Hall, Attorney at Law. Employer's Exhibit 1 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?

Was claimant's separation from employment a layoff, a discharge for misconduct, or a voluntary quit without good cause attributable to the employer?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a housekeeper, from February 25, 1991, until June 30, 2017, when she was laid off by the employer. Effective July 1, 2017, the employer outsourced its maintenance and housekeeping departments to Sodexo, a third-party company. The employer notified each employee in these departments, including claimant, that it would no longer be the employer after June 30, 2017. (Exhibit 1) This notification was given to employees through an in-person meeting in early May and via letter enclosed with each

employee's June 15 paycheck. Each employee was notified that all maintenance and housekeeping employees were being "transitioned" to Sodexo effective July 1, and all employees in the affected departments were provided information about compensation and benefits. The employer believes claimant did not accept or pursue an offer of work from Sodexo because she had wanted time off to care for her ill spouse.

The employer received the unemployment insurance decision dated July 20, 2017 (reference 09), as well as several other decisions and documents from the agency. The deadline to appeal the July 20 decision was July 30, 2017, which fell on a Sunday. The employer submitted its appeal on July 31, 2017. Johnson testified that she did not receive the unemployment insurance decision dated July 18, 2017 (reference 01), and therefore she was not aware of its appeal deadline of July 28, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was laid off from employment due to a lack of work. Benefits are allowed, provided she is otherwise eligible.

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is. Iowa Code § 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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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, subsection 10, 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 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. 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 appellant 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 Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer's appeal shall be accepted as timely.

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 Code § 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 individual shall be disqualified for benefits 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. 871-24.1(113)a provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

...

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The evidence in this case establishes that claimant separated from employment through no fault of her own. She did not voluntarily end her employment with this employer, and she was not discharged for any disqualifying misconduct. Rather, claimant was laid off and employer had no work available for claimant after June 30, 2017. The employer eliminated claimant's position effective July 1, 2017, by outsourcing its housekeeping and maintenance departments to Sodexo. Benefits are allowed, provided claimant is otherwise eligible. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The July 18, 2017 (reference 01) unemployment insurance decision is affirmed. The appeal was timely filed. Claimant was separated from employment for no disqualifying reason when she was laid off. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

REMAND:

The issues of whether claimant failed to accept a suitable offer of work from Sodexo and whether claimant is currently able to work, available for work, and actively and earnestly seeking work are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn