

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FRANCISCO AYALA ANGEL
Claimant

EL PORTON HUERTA INC
Employer

APPEAL 21A-UI-06855-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/20
Claimant: Appellant (2)

Iowa Code 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 2, 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 May 14, 2021. The claimant participated and testified. Exhibits D-1 and D-2 were admitted the record.

ISSUE:

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 full-time as a cook from September 2019, and was separated from employment on December 6, 2020, when he was laid off. The claimant's immediate supervisor was Co-owner Marta Huerta.

The claimant does not know if the employer has a policy stating if an employee does not show up for work for three consecutive shifts without notice they are considered a voluntarily quit.

On December 6, 2020, Co-owner Reuben Lopez told the claimant he was being laid off due to the economic downturn from Covid19. Several waitresses and a host were laid off at the same time. The claimant did not quit or tell anyone he was quitting. The claimant did not walk off of the job.

The claimant is uncertain if the employer currently has work available. The claimant explained he has not called the employer to get this information because he is trying to get a cook position in a larger town.

The decision disqualifying the claimant from benefits is dated March 2, 2021. It stated it would become final if the claimant did not file an appeal before March 12, 2021. (Exhibit D-1) The

claimant filed his appeal on March 7, 2021, through Iowa Workforce Development's online appeal portal. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes timeliness of appeal was placed on the hearing notice in error. The administrative law judge further concludes the claimant was laid off due to a lack of work.

Iowa Code section 96.5(1) provides:

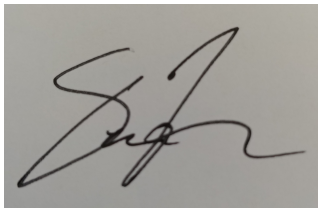
An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The March 2, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was laid off due to lack of work. Benefits are granted, provided he is otherwise eligible.



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

May 24, 2021
Decision Dated and Mailed

smn/kmj