

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SELAMAWIT F KIDAN
Claimant

APPEAL 20A-UI-07445-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK CO
Employer

**OC: 4/19/20
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timely Appeal

STATEMENT OF THE CASE:

On June 30, 2020, the claimant filed an appeal from the June 19, 2020, (reference 01) unemployment insurance decision that denied benefits based on voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2020. Claimant participated and her husband Deri Hagos testified. Employer did not participate.

ISSUES:

Did claimant file a timely appeal?
Did claimant quit 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 began working for employer on August 21, 2017. Claimant last worked as a full-time production worker. Claimant was separated from employment on April 12, 2020 when claimant left work due to potential exposure to Covid-19 while working at Swift's meat packing plant in Marshalltown Iowa. Claimant knew of persons who were contracting Covid-19 at work. Claimant has a daughter who has asthma and claimant was worried about the extra risk that her daughter would face if claimant brought home Covid-19. Claimant's primary language is Tigrinya. Claimant's fact finding decision was not translated into Tigrinya. Claimant appealed her decision as soon as she learned that she needed to file an appeal. The appeal was filed on June 30, 2020 one day after the 10-day appeal time on the notice of the fact finding decision in English and Spanish.

REASONING AND CONCLUSIONS OF LAW:

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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not provided in her primary language and was not provided information about how she could appeal her decision as required by U.S. Department of Labor. See *Program Letter No 02-16 Change 1* and 29 CFR § 38.9. 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). Claimant appealed as soon as she was made aware she needed to appeal. I find claimant's appeal was timely.

Claimant has the burden of proving the voluntary quit was for good cause attributable to the employer. Iowa Code § 96.5(1). A voluntary quit requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer Co.*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant satisfied her burden of proving she voluntarily quit her job with good cause attributable to the employer. 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.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that

would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Admin. Code r. 871-24.26(2) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (2) The claimant left due to unsafe working conditions.

Claimant was hired before the Covid-19 crisis was part on her employment. At the time of her hire the risks of her exposure and her risk of her exposure to co-workers and the public was not part of her job. With Covid-19 there was a substantial change in claimant's job that affected her safety. Claimant's daughter has an underlying health condition that could make a Covid-19 infection more serious or deadly. I find that claimant had good cause for quitting her employment due to change in contract of hire and unsafe working conditions.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 19, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are awarded, provided she is otherwise eligible. The claimant's appeal is timely.



James F. Elliott
Administrative Law Judge

August 14, 2020
Decision Dated and Mailed

je/sam