

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIA JASONA C HOPSON

Claimant

APPEAL 21A-UI-19362-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR NUNN TRANSPORTATION INC

Employer

OC: 02/07/21

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Tia Jasona C. Hopson, filed an appeal from the March 23, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Barr-Nunn Transportation, Inc., for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on October 22, 2021. The claimant participated personally. The employer participated through Tracy Murphy. Department's Exhibit D-1 was admitted.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an overnight dispatcher from September 17, 2018, until this employment ended on February 3, 2021, when she resigned.

Claimant's spouse received orders as an active duty military member calling him for duty-related relocation overseas. Claimant submitted her two-week notice on January 22, 2021, intending for it to be effective February 5, 2021. She last worked February 3, 2021. When she submitted her notice, she told the employer that she was resigning due to her husband's relocation related to military service.

A disqualification decision was mailed to claimant's last known address of record on March 23, 2021. She did not receive the decision. She was unaware of the disqualification until she began emailing and calling Iowa Workforce Development to find out why she was not receiving any payments. The same day that she learned of the decision, she submitted her appeal, on August 31, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment because of her spouse's relocation by the military.

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 section 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); *see also In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

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 claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

Iowa Code section 96.5(1)b 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. But the individual shall not be disqualified if the department finds that:
 - b. The individual's leaving was caused by the relocation of the individual's spouse by the military. The employer's account shall not be charged for any benefits paid to an individual who leaves due to the relocation of a military spouse. Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The claimant left employment because of her spouse's relocation by the military. Accordingly, benefits are allowed.

DECISION:

The March 23, 2021, (reference 01) unemployment insurance decision is reversed. The claimant's appeal is timely. The claimant voluntarily left employment because of the spouse's relocation by the military. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.



Alexis D. Rowe
Administrative Law Judge

November 3, 2021
Decision Dated and Mailed

ar/kmj