

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA DE JESUS ROJAS PEREZ
Claimant

APPEAL 23A-UI-07709-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS LLC
Employer

**OC: 07/16/23
Claimant: Appellant (2-R)**

Iowa Code § 96.5(1)c – Quit to Care for a Family Member in Another Jurisdiction

STATEMENT OF THE CASE:

The claimant, Maria De Jesus Rojas Perez, filed an appeal from the August 2, 2023, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was discharged for excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on August 23, 2023. The claimant participated. A Spanish language interpreter was provided to allow the claimant to participate in her own language. The claimant's partner, John Marshall, provided moral support. The employer, Seaboard Triumph Foods LLC, did not participate. Exhibits A and B were received into the record.

ISSUE:

Whether the claimant's separation from the employer was disqualifying?

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 worker from May 22, 2018, until this employment ended on June 20, 2023, when she quit. The claimant worked a regular schedule in this role from 5:50 a.m. to 2:50 p.m. Monday through Friday. She occasionally worked Saturdays.

On June 20, 2023, the claimant received calls from her sister in Mexico that she was in the middle of a medical emergency. The claimant immediately traveled to Mexico with the sole purpose of helping her sister recover. The claimant explained that other family members were not in as good of a position to help. The claimant let an agent of the union know before she left.

On June 22, 2023, the claimant received a doctor's note from her sister's physician explaining that she would need assistance while she recovered from surgery for 15 days. The claimant provided this paperwork to the employer while she was away.

On July 11, 2023, the claimant was satisfied that her sister was recovered enough to continue without her assistance. The claimant sent exhibits A and B to the employer while she was in Mexico.

On July 12, 2023, the claimant returned to the United States. The claimant was informed by her phone that she missed several calls from the union representative, while she was away. One of the messages informed her that she had been terminated for not providing exhibits A and B the preceding day from when she did.

On August 10, 2023, the employer informed the claimant she would be eligible for rehire effective August 13, 2023, but not in the same department. The claimant does not know if work was available in her existing department. The claimant rejected this offer because the work in the Killing Department could cause her to be dehydrated.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant voluntarily quit under 96.5(1)(c) to care for the sole purpose of taking care of an immediate family member. The issue regarding the claimant's ability to and availability for work effective July 16, 2023 is remanded to the Benefits Bureau given she is no longer disqualified by her separation.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Code § 96.5(1)c provides:

Causes for disqualification. 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

In this case, claimant resigned when she left the employer's plant without first informing them that she was going to Mexico. However, the claimant immediately returned from Mexico upon the claimant's recovery, but upon her return, she was informed work was no longer available at the plant. She was told she was terminated. As such, claimant has met the requirements of Iowa Code § 96.5(1)c. While claimant's leaving the employment may have been based upon

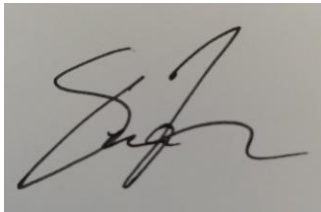
good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

DECISION:

The August 2, 2023, (reference 01) unemployment insurance decision is REVERSED. The claimant quit due to a cause attributable to the employer. Benefits are granted provided the claimant is otherwise eligible for benefits.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue whether the claimant was able and available effective July 16, 2023, given her separation is no longer disqualifying.

A handwritten signature in black ink, appearing to read 'S. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge II

September 6, 2023
Decision Dated and Mailed

SMN/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.