IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

TYLER P RITCHIE Claimant **CASEY'S MARKETING COMPANY** Employer	**APPEAL 21A-UI-14017-AR-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/28/2021** **Claimant: Appellant (2R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On June 14, 2021, the claimant, Tyler P. Ritchie, filed an appeal from the June 1, 2021, (reference 01) unemployment insurance decision that denied benefits based on the determination that the employer, Casey's Marketing Company, discharged claimant for conduct not in the employer's best interests. The parties were properly notified about the hearing. A telephone hearing was held on August 5, 2021. Claimant participated personally. The employer participated through Brad Beeber. Department's Exhibit D-1 was admitted.

ISSUES:

Is the claimant's appeal timely?
Did the claimant quit employment without good cause attributable to the employer, or did the employer discharge claimant for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a store team member beginning on January 13, 2020, and was separated from employment on June 1, 2020, when he resigned.

Throughout his employment, claimant typically received 32 hours per week. He was paid $12.50 per hour. However, when the COVID-19 pandemic began to affect Iowa, the store where claimant worked sharply reduced the hours for all the team members, to between eight and 12 per week. Even with an additional $2.00 per hour in hazard pay, claimant's pay reduced sharply. He maintained contact with Beeber throughout the period, expressing his dissatisfaction with the reduced hours, but there was little that could be done.

Claimant last worked on May 28, 2020. Around the same time, he began working another job to bring in additional income. On June 1, 2020, claimant was scheduled to work, but slept through his alarm because he had worked late the night before at the other job. He spoke with Beeber

that day and resigned his position. The parties agreed that claimant's employment had not be involuntarily terminated by the employer.

Claimant moved from his address of record at the end of March 2021. In early April 2021, he updated his address with Iowa Workforce Development to his grandmother's address in Kansas. The disqualification decision was mailed to claimant's address of record on June 1, 2021. However, claimant did not receive the decision within the time period allowed for appeal. He learned of the disqualification decision when he called Iowa Workforce Development on June 13, 2021. He submitted his appeal on June 14, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

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, 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 Date 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 § 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 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.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d 445, 447–78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871—24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871—24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to Iowa Admin. Code r. 871—24.26(6)(b) but not 871—24.26(4),

notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

While the employer is certainly entitled to make personnel decisions based upon its needs, that need does not necessarily relieve it from potential liability for unemployment insurance benefit payments. Since claimant's hours and associated pay were reduced substantially because of a business decision, the separation was with good cause attributable to the employer.

DECISION:

The June 1, 2021, (reference 01) unemployment insurance decision is reversed. The claimant's appeal is timely. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether the claimant worked in and was paid sufficient wages to be eligible for benefits in a second benefit year is remanded to the Benefits Bureau for an initial investigation and determination.

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Alexis D. Rowe
Administrative Law Judge

August 12, 2021
Decision Dated and Mailed

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