

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARYANN BAILEY
Claimant

ALORICA INC
Employer

APPEAL 21A-UI-19403-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/25/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Maryann Bailey, filed an appeal from the July 15, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Alorica, Inc., for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on October 25, 2021. The claimant participated personally. The employer participated through its hearing representative, Lamoyne Morris, with witness Corissa Stafford. Department's Exhibit D-1 was admitted.

ISSUES:

Is the claimant's appeal timely?
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 from June 2012, until this employment ended on April 27, 2021, when she resigned.

Throughout her employment, until March 31, 2021, claimant worked on the account of another of the employer's clients. In that role, claimant did not have to do any phone work. She operated exclusively online. When the account of the former client ended on March 31, 2021, claimant transitioned to the new role of Zillow concierge. In that role, claimant worked primarily on the phone. She received training that she acknowledged was sufficient, but she did not feel she was performing the work well. Additionally, the phone work made her anxious. During her month of training, claimant spoke with Stafford on at least one occasion about her concerns with the new role. Stafford offered claimant additional training and additional oversight once claimant "went live" on the phones. Claimant also inquired whether there were other open positions in which she would not have to work on the phones with the same frequency. Stafford provided claimant with information about other positions in the company, but they were also phone-based. Claimant "went live" one day, and experienced such anxiety that she called out

sick the following two days. On April 27, 2021, she submitted her resignation, citing anxiety and inability to perform the duties of the job.

A disqualification decision was mailed to claimant's last known address of record on July 15, 2021. Claimant did not receive that decision. In following up with Iowa Workforce Development via phone and email, eventually, claimant learned about the decision. She also learned that the deadline to appeal—July 25, 2021—had already passed. She did not know how to go about appealing the decision. Finally, claimant learned that she could get information and assistance from her local Iowa Workforce Development office. The same day she visited the office to inquire about how to appeal, on September 1, 2021, she also submitted her appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without 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 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) 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—24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(27) The claimant left rather than perform the assigned work as instructed.

...

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

Here, claimant felt strongly that she had not left for a personal reason, but instead, because she had been transitioned into a new role that caused her intense anxiety. Additionally, she did not

feel she performed well in the role. However, the employer would have continued to offer claimant work, and also offered potential solutions to address claimant's concerns, including additional training and oversight. The employer did not tell claimant that her job was in jeopardy based on her performance. Indeed, the employer testified that claimant successfully completed the training. Claimant worked in the role for one day before determining that she needed to resign. She did not take advantage of any of the employer's offered solutions. While claimant's leaving 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 are denied.

DECISION:

The July 15, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant's appeal is timely. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

November 8, 2021
Decision Dated and Mailed

ar/scn