

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA FULLER
Claimant

APPEAL 21A-EUCU-00059-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUMBOLDT COMMUNITY SCHOOL DIST
Employer

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On April 6, 2021, the claimant, Jessica Fuller, filed an appeal from the January 13, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Tuesday, June 15, 2021. The claimant, Jessica Fuller, participated. The employer, Humboldt Community School District, participated through Lisa Thul, Payroll and HR Manager. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?

Did the claimant voluntarily quit her employment 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 was employed with the employer, most recently as a full-time English teacher, from March 16, 2016, until June 6, 2019, when she resigned.

On April 16, 2019, claimant submitted a resignation letter stating she would end her employment on June 6, 2019. In her letter, claimant cited wanting to be home and care for a young child. Claimant was allowed to work through June 6.

In the weeks leading up to April 16, 2019, claimant had missed numerous days of work due to accompanying an ill child at the hospital. Former superintendent Greg Darling had told claimant he could not guarantee that her position would be there for her next year, due to her absences. He recommended to her that she resign. However, the parties agree that contracts for the coming academic year had not yet been drafted, and Thul had no knowledge that claimant would not have a job in the coming year.

The unemployment insurance decision was mailed to the appellant's address of record on January 13, 2021. The appellant did not receive the decision. The first notice of disqualification claimant received were the overpayment decisions issued by the agency on March 30, 2021. Claimant immediately appealed after receiving those decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit her employment without good cause attributable to the employer. Benefits must be withheld.

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 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. IDJS*, 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. IDJS*, 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 timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the administrative law judge finds this appeal has been timely filed.

The next issue is whether claimant voluntarily left her employment with good cause attributable to the employer.

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. 871-24.25 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: ...

(19) The claimant left to enter self-employment.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation.

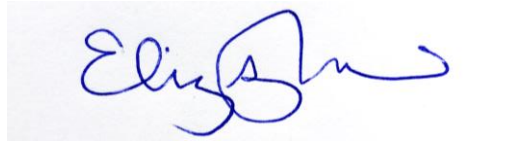
Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products 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 believed the employer was not going to issue her a new contract. Based on this belief, she chose to leave her position and open a home daycare. Contracts had not been drafted at that point, and it was speculation – not certainty – that claimant would not be receiving a new contract. The administrative law

judge finds claimant left her employment without good cause attributable to the employer. Benefits are withheld.

DECISION:

The January 13, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant separated from 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.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 29, 2021
Decision Dated and Mailed

lj/mh