

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRACY J HIATT
Claimant

PRASAD INC
Employer

APPEAL 21A-UI-13140-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On May 30, 2021, the claimant, Tracy J. Hiatt, filed an appeal from the May 19, 2021, (reference 02) unemployment insurance decision that denied benefits based on the determination that claimant quit employment with the employer, Prasad, Inc., without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on August 9, 2021. Claimant participated personally. The employer participated through Owner/Manager Vin Patel. Department’s Exhibit D-1 was admitted to the hearing record.

ISSUES:

Was the claimant’s appeal timely?
Did the claimant quit employment without good cause attributable to the employer, or was the claimant discharged for disqualifying 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 receptionist beginning on January 2, 2017, and was separated from employment on December 13, 2020, when she was discharged.

On December 13, 2020, claimant was tardy reporting for work. Claimant had been tardy for many shifts prior to the day on which her employment ended. Claimant had another job at the time, which caused her to be late to work with this employer. On the afternoon of December 13, 2020, she simply lost track of time during the period between her shifts.

When claimant reported for work on December 13, 2020, Patel told her that she could not be late again, and if she was, she would be terminated. Claimant said, “I could be gone right now.” Patel responded, “Fine,” and considered claimant separated from employment at that time.

Claimant had received two prior disciplinary actions for attendance. She received one on June 22, 2020, for a no call/no show. She received the second on August 17, 2020, for another

incident in which she called and said she would be late, but never reported for work thereafter. The second warning indicated that future incidents would result in termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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. 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 deadline for claimant to file her appeal fell on a Saturday—May 29, 2021. Claimant filed her appeal the following day, a Sunday. The following Monday, May 31, 2021, was a holiday. When an appeal deadline falls on the weekend or a holiday, the deadline is extended to the next business day—in this case, June 1, 2021. Claimant’s appeal is timely filed.

The next issue is whether claimant’s separation from employment is disqualifying. As a preliminary issue, the administrative law judge finds that claimant quit employment, as opposed to being discharged from employment.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394–95 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer’s version of events to be more credible than the claimant’s recollection of those events. The employer testified that he told claimant that additional tardiness would not be tolerated after that day, and

she would face termination if it continued. In response, claimant said she “could be gone” that day. Claimant did not rebut the employer’s testimony regarding this statement. The statement is evidence of claimant’s intent to terminate the employment relationship, which was followed by an act carrying out that intention. Claimant voluntarily quit employment.

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:

...

(28) The claimant left after being reprimanded.

Claimant left in anticipation of being discharged, but before she was actually discharged from employment. She left after a reprimand on her final day of employment. Claimant quitting after being reprimanded for ongoing lateness issues does not amount to good cause attributable to the employer under Iowa law. Benefits are denied.

DECISION:

The May 19, 2021, (reference 02) unemployment insurance decision is affirmed. Claimant voluntarily left the 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

August 13, 2021
Decision Dated and Mailed

ar/scn