

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENA D DELLACA
Claimant

APPEAL 21A-UI-18263-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERFICUT COMPANIES INC
Employer

**OC: 11/29/20
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for misconduct
Iowa Admin. Code r. 871-24.25(28) - VQ - Reprimand
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant, filed an appeal on August 18, 2021, from the July 23, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work on May 14, 2021 without good cause attributable to the employer. The parties were properly notified of the hearing. A telephonic hearing was held on October 12, 2021. The claimant, Dena Dellaca, participated. The employer, Perficut Companies Inc., participated through Wes Brommel. Judicial notice was taken of the administrative file and the contents therein. No exhibits had been received.

ISSUES:

Is claimant's appeal timely?

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on July 23, 2021. Appellant received the decision July 26, 2021. Appellant filed their appeal by mail the next day, July 27, 2021. Appellant called IWD to confirm her appeal was received. Upon learning it was not received and now late, the IWD representative advised her she could appeal electronically and walked her through how that is done. Appellant resubmitted an appeal that same day, August 18, 2021.

Claimant was employed full time with a set schedule as a seasonal employee, starting May 7, 2018, as a laborer. Her last day worked was May 14, 2021 and this is the date of separation. Claimant had a meeting with Jody, Amy and Wes Brommel, where they were going over disciplinary write-ups. Claimant refused to sign the disciplinary forms, stating - I'm not signing

this...I'm done...I'm done. Leading Mr. Brommel to say "we hate to see you go." Claimant walked out of the meeting and left her shift. Employer took claimant's statements and actions as quitting.

REASONING AND CONCLUSIONS OF LAW:

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 filed an appeal in a timely manner via the United States Postal Service but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed this time electronically. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant voluntarily quit or was discharged.

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

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(28) 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 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).

Claimant was being reprimanded. Claimant refused to sign the reprimands. In claimant's mind, this was her first reprimand ever in three years of employment and she was not happy. She said she was not singing and that she was done. Claimant left the meeting before it was over and left her shift. Claimant asserts she was discharged, but agrees that no one actually said she was. Claimant asserts Mr. Brommel telling her that "we hate to see you go" was him telling her she was fired. It was not. It was his response to her stating more than once that "I'm done." While she may have good reasons to quit, they are not a good reasons attributable to the employer. As such, benefits must be denied.

DECISION:

Claimant's appeal is considered timely and the July 23, 2021 (reference 01) unemployment insurance decision denying benefits is **AFFIRMED**. Claimant's voluntary quit is 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.



Darrin T. Hamilton
Administrative Law Judge

October 15, 2021
Decision Dated and Mailed

dh/mh