

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARINA L SHOARS
Claimant

R.C. WILLETT CO. INC.
Employer

APPEAL 22A-UI-05661-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Marina L. Shoars, filed an appeal from the February 10, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on April 13, 2022. The hearing was held together with Appeal 22A-UI-05663-JC-T. The claimant participated personally. The employer/respondent, R.C. Willett Co. Inc., participated through Rex Willett, owner. Official notice of the administrative record was taken. Department Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence, the administrative law judge finds: Claimant worked for this employer as a full-time camper finisher from 2016 until she quit the employment without notice on October 10, 2020. Continuing work was available.

Employer is a small company, of approximately thirty people, and they make campers. Mr. Willett’s brother, Ryan, and his sister in law were amongst the employees, as was claimant and her husband, Tim. Small talk is common in the shop as people work in close proximity of each other.

Claimant quit the employment based upon a comment she overheard between Ryan Willett and his wife. Claimant stated it was well known that Mr. Willett’s family attended church, based upon comments made in the work place. Claimant also said she had tattoos on her arms, which were visible while at work, which reflected she adhered to a different belief system than him. In claimant’s five years of employment, she had not heard prior comments about faith which offended her. However, approximately one week prior to quitting, she was working and

overheard Mr. Willett and his wife talking. It was raining outside and a comment was made to the effect that anyone who did not believe in God would drown. Claimant believed the comment was about her. Claimant did not say anything to Ryan Willett about the comment or acknowledge she had overheard it. Mr. Willett did not reference any specific person when making the comment to his wife. At the time, he and his wife were outside of a camper, and claimant was working inside it.

Claimant did not report the comment to owner, Rex Willett, but instead had her husband do so, as she was very upset by it. He stated he would speak to Ryan Willett about it, and did so. There were no further comments made in the workplace about religion, faith or beliefs after it was reported through claimant's husband. Claimant stated there was "shop talk" about her overreacting to the comment, which further upset her. Claimant did not specify what was said, who said it or when comments were made, but determined she no longer wanted to continue working for the employer and quit the employment without notice. Her husband notified Rex Willett that she had quit.

An initial decision (reference 01) was mailed to the claimant/appellant's address of record on February 10, 2021. The decision contained a warning that an appeal must be filed by February 20, 2021. The decision also directed the appellant to call the customer service line for assistance. Appellant did not receive the decision. Appellant filed the appeal on March 3, 2022, after receiving the overpayment decision dated February 22, 2022. See Department Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v.*

Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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 question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant 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 appeal shall be accepted as timely.

The next issue to address is whether claimant quit the employment with good cause attributable to the employer, according to Iowa law.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The claimant has the burden of proof to establish she quit with good cause attributable to the employer, according to Iowa law. Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

Iowa Admin. Code r. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

In this case, claimant worked for this employer for approximately five years. Employees routinely would engage in personal conversations while working, and prior to a week before quitting, claimant had not heard or raised concerns of hearing offensive comments in the workplace. Claimant decided to quit based upon one comment overheard by an employee, in which he referenced people not believing in God drowning. Claimant was named in the comment or part of the conversation, but believed it was about her. Once claimant raised concern about the comment, through her husband reporting it to Rex Willett, there no additional comments made. Claimant also believed that "shop talk" or gossip insinuated she had overreacted to the comment.

"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. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973). An employee has the right to work in an environment free from offensive, insensitive and hurtful comments. An employee also has the right to expect that management when notified about such conduct will take reasonable steps to end the conduct. Such was the case here, when claimant was offended by a single comment overheard, not directed at her, or to her, in which a co-worker made a comment about non-believers of God. While the administrative law judge does not condone the comment made, or consider it to be professional language, it was a single, isolated comment. Once reported to management, it did not occur again.

Under the facts of this case, a reasonable person would not conclude that the working conditions were intolerable and detrimental to the point that a person would quit the job without notice. While the claimant may have had personally compelling reasons to quit the employment, she did not quit with good cause attributable to the employer, according to Iowa law. Benefits must be withheld.

DECISION:

The February 10, 2021 (reference 01) initial decision is affirmed. The appeal is accepted as timely. The claimant voluntarily quit the employment without good cause attributable to the employer. The 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.



Jennifer L. Beckman
Administrative Law Judge
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April 19, 2022
Decision Dated and Mailed

jlb/mh

NOTE TO CLAIMANT:

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>