

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAVE M BOOS**  
Claimant

**APPEAL 22A-EUCU-00009-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS COUNTRY CLUB LLC**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Dave M. Boos, filed an appeal from the January 21, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on April 15, 2022. The claimant participated personally. The employer/respondent, Council Bluffs Country Club LLC., participated through Dr. Behrouz (“Doc”) Rassekh. Jerry Wilier also testified. 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 began work in 2016 and would work as a full-time, seasonal pool manager for the employer. Claimant also operated a sand volleyball league outside of his employment contract with this employer, but on employer’s property. In addition claimant had his own business.

Due to the COVID-19 pandemic, the pool did not open on Memorial Day, as it customarily would. Rather, the pool opened on June 18, 2020, stating the employer was unsafe in implementing COVID-19 safety protocols. Claimant asserted he quit because the employer not enforcing social distancing with members, as people would move chairs to sit near each other. Claimant stated masks were not enforced outside, that there was a lack of signage directing members to social distance. Claimant also stated employees were required to share bathrooms with members. Claimant stated he had told his supervisor repeatedly he was concerned and was told to mind his own business. Claimant quit on June 19, 2020, right after the pool opened. In light of finding employer to be unsafe, he did return to the employment for the following spring 2021.

The week prior, claimant learned his volleyball league would not be able to run for the summer 2020 season due to COVID-19. Employer surmised claimant quit because of the volleyball league not running and not because of safety protocols. Claimant's wife, who also worked for employer, also quit at the same time.

The procedural history of this claim is complex and is as follows: A reference 01 decision dated July 29, 2020 concluded was overpaid \$468.00 in regular benefits due to unreported wages in connection with his unemployment claims between May 17, 2020 and May 30, 2020.

A reference 02 initial decision dated December 3, 2020 established an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits for the period May 17, 2020 and May 30, 2020 because claimant was denied regular unemployment insurance benefits through the Reference 01 decision. This decision was later reversed through 21A-EUCU-00004-AW-T. Judge Williamson reversed the overpayment of FPUC benefits, finding while claimant was not entitled to regular unemployment insurance benefits for that period, he was entitled to Pandemic Unemployment Assistance (PUA) benefits for the period of May 17, 2020 and May 30, 2020. And because claimant was eligible for PUA benefits for those weeks, he would be eligible for supplemental FPUC benefits.

A reference 03 initial decision dated January 21, 2021 denied regular unemployment insurance benefits to claimant based upon a finding he voluntarily quit his employment with Council Bluffs Country Club LLC., without good cause on June 19, 2020. (Claimant was subsequently rehired). Claimant appealed this decision and it is addressed in Appeal 22A-EUCU-00009-JC-T.

A reference 04 decision dated December 7, 2020 denied PUA benefits to claimant. It was modified in favor of claimant to allow PUA benefits for the period of March 29, 2020 to September 7, 2020. See 22A-DUA-00148-AW-T. The administrative law judge in the April 15, 2022 hearing does not have the legal authority to modify or expand the dates of eligibility in this decision.

A reference 05 initial decision dated February 17, 2022 concluded claimant had an outstanding overpayment of benefits and that IWD had legal authority to withhold a portion of claimant's state tax refund to recover a portion of his overpayment. Claimant appealed this decision and it is addressed in Appeal 22A-UI-07360-JC-T.

A reference 06 initial decision dated March 18, 2022 concluded claimant was overpaid Pandemic Unemployment Emergency Compensation (PEUC) benefits in the amount of \$1,701.00 for the period of September 8, 2020 and October 24, 2020. Claimant appealed this decision and it is addressed in Appeal 22A-UI-07361-JC-T.

A reference 07 initial decision dated March 18, 2022 concluded claimant was overpaid extended benefits (EB) in the amount of \$243.00 for the week between October 25, 2020 and October 30, 2020. Claimant appealed this decision and it is addressed in Appeal 22A- UI-07362-JC-T.

As it relates to this hearing, the timeliness of claimant's appeal is at issue. An initial decision (reference 03) was mailed to the claimant/appellant's address of record on January 21, 2021. The decision contained a warning that an appeal must be filed by January 31, 2021. The decision also directed the appellant to call the customer service line for assistance. Claimant filed the appeal on March 27, 2022 (See Department Exhibit 1).

The claimant stated he did not receive the initial decision in the mail, and despite being found eligible for PUA benefits in 2021 (which required he not be eligible for regular benefits), he was unaware of the disqualification until March 2022.

### **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 is whether claimant voluntarily quit the employment with good cause attributable to the employer.*

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

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. "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).

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).

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, 394-395 (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.* The administrative law judge heavily weighed the facts that claimant quit shortly after learning his sand volleyball league was cancelled the week prior (which was an independent source of income for him), that claimant worked only a few days after the pool opened, and the fact he returned the following spring 2021. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the weight of the evidence in the record establishes claimant has not met his burden of proof to establish he quit for good cause reasons within Iowa law. The weight of evidence supports that more likely than not, claimant's decision to quit was based upon the sand volleyball league not operating in 2020.

While the claimant may have had personally compelling reasons to quit the employment on June 19, 2020, he has not established he quit for good cause attributable to the employer, according to Iowa law. Accordingly, the administrative law judge concludes the claimant is not eligible for regular unemployment insurance benefits. This decision will not negatively impact claimant's eligibility for PUA benefits.

## **DECISION**

The January 21, 2021 (reference 03) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits is affirmed. The claimant's appeal is timely. The claimant voluntarily quit the employment without good cause. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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May 5, 2022  
Decision Dated and Mailed

jlb/mh