

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTAL A SULLIVAN
Claimant

ENLIVANT AID ES LLC
Employer

APPEAL 19A-UI-09282-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/20/19
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

On November 25, 2019, Christal A. Sullivan (claimant) filed an appeal from the November 5, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Enlivant Aid ES, LLC (employer) for personal reasons, which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on December 19, 2019. The claimant participated personally. The employer participated through Shelby Norby, Executive Director. The Claimant's Exhibit A and the Department's Exhibits D1 and D2 were admitted into the record.

ISSUES:

Is the claimant's appeal timely?
Did the claimant voluntarily quit 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: The claimant was employed full-time as an Assistant Chef beginning on December 13, 2018, and her last day worked was August 20, 2019. On that day, the claimant became ill with a gastrointestinal issue and notified her doctor. The claimant's doctor stated she would excuse the claimant from work for as long as necessary.

The claimant told Samara Smith, the previous Executive Director, she was sick and needed a Leave of Absence (LOA). Smith told the claimant that she was not eligible for job protected leave under the Family Medical Leave Act (FMLA) but would be granted a 30-day LOA. Smith told the claimant that if she could not return by September 20, then she would need to reapply for her position. On September 24, the claimant's family doctor released her to return to work without restrictions although she is still seeing specialists for the issues. The claimant did not notify the employer that she was released to return to work and did not offer her services.

The unemployment insurance decision was mailed to the claimant's address of record on November 5, 2019. The claimant did not receive the decision. She learned of her disqualification on or about November 20, when she contacted Iowa Workforce Development (IWD) to check on the status of her benefits. After speaking with the IWD representative, the claimant went to her local post office and learned that a moved with no forwarding address notice order had mistakenly been applied to her address. (Exhibit A) The claimant filed her appeal on November 25.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely; however, the claimant separated from employment without good cause attributable to the employer. Benefits are denied.

1. Is the claimant's appeal timely?

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless 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(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 claimant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received due to an error by the United States Postal Service (USPS). 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 filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

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

Iowa Code section 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

...

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

a. Obtain the advice of a licensed and practicing physician;

- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The claimant left upon the advice of her treating physician. The claimant's unrefuted testimony is that she has been released to return to work without restrictions effective September 24. However, the claimant did not return to the employer and offer her services. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The claimant's appeal is timely. The November 5, 2019, reference 01, unemployment insurance decision is affirmed. The claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as she works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

December 23, 2019
Decision Dated and Mailed

src/scn