

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GREGORY W WATSON
Claimant

APPEAL NO. 13A-UI-03151-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LF STAFFING SERVICES INC
Employer

OC: 04/05/09
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 8, 2009, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 18, 2013. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Gregory Watson. Official notice is taken of agency records.

ISSUES:

Whether the claimant filed a timely appeal; and
Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On June 8, 2009, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by June 18, 2009, or received by the Appeals Section on that date. The claimant's appeal was filed on February 15, 2013. He never received a copy of the decision.

The claimant established a claim for unemployment insurance benefits with an original claim date of April 5, 2009. He received seven weeks of benefits for the weeks between April 5, 2009 and May 23, 2009. The claimant was disqualified because the representative concluded that he voluntarily quit to move to another locality. The claimant only moved eight miles and did not quit his job. He made repeated requests for work and was told that no work was available.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 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 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. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant was deprived of a reasonable opportunity to assert an appeal because he never received a copy of the representative's decision. The appeal will be treated as timely.

Iowa Code section 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 quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The claimant is eligible for unemployment insurance benefits. The claimant did not quit his job to move to another locality. The claimant only moved eight miles and made requests for work from the employer and other employers. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated June 8, 2009, reference 03, is reversed. The claimant's appeal is deemed timely. The claimant is eligible for unemployment insurance benefits provided he meets all other eligibility requirements.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs