IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARY LOU ORTIZ
Claimant

CEDAR RAPIDS COMM SCHOOL DIST
Employer

APPEAL NO. 13A-UI-10331-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/28/13
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Mary Lou Ortiz filed an appeal from the August 23, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 4, 2013. Ms. Ortiz participated. Anthony Spurgetis represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Whether there is good cause to treat the appeal as timely. There is.

Whether Ms. Ortiz separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 23, 2013, Iowa Workforce Development mailed a copy of the August 23, 2013, reference 01, decision to Mary Lou Ortiz at her last-known address of record. The decision contained a warning that an appeal from the decision must be postmarked by September 2, 2013 or received by the Appeals Section by that date. The decision also indicated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. September 2, 2013 was Labor Day and the next working day was Tuesday, September 3, 2013. Ms. Ortiz did not receive the decision until September 6, 2013. Ms. Ortiz faxed her appeal to the Appeals Section on September 11, 2013. The Appeals Section received the appeal by fax on September 11, 2013.

Mary Lou Ortiz was employed by Cedar Rapids Community School District as a part-time office clerk from October 2010 until June 3, 2013, when she voluntarily quit to relocate to California and care for her ailing mother. In mid-May, Ms. Ortiz notified the employer that she would not be available for work beyond June 3, 2013, the last day of her school year contract. The employer had not extended a contract to Ms. Ortiz for the coming year at the time she indicated she would not be working beyond June 3, 2013.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides:

> 2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs “a” through “h”. 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The appeal in question was filed on September 11, 2013, when the Appeals Section received the faxed appeal.

The evidence in the record establishes 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. 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 record shows that Ms. Ortiz did not have a reasonable opportunity to file a timely appeal because she did not receive the decision until after the deadline for appeal had passed. Ms. Ortiz then filed an appeal within five days or receiving the decision. The delay in filing the appeal was attributable to the United States Postal Service. For that reason, there is good cause to treat the appeal as a timely appeal. See 871 IAC 24.35(2). The administrative law judge jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

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.

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.

Where a claimant was hired for a specific period of time and completed the contract of hire by working until the specific period had lapsed, the claimant is deemed to have voluntarily quit for good cause attributable to the employer. See 871 IAC 24.26(22). Ms. Ortiz's contract with the Cedar Rapids Community School District was a school year contract that ended on June 3, 2013, the last day of school. Ms. Ortiz fulfilled the contract of hire by working to the end of the contract period. Ms. Ortiz is eligible for benefits provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The agency representative's August 23, 2013, reference 01, decision is reversed. The claimant fulfilled the contract of hire and her separation was, therefore, for good cause attributable to the employer. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/css