IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RIEK Y RUEI
Claimant

FARMLAND FOODS INC
Employer

APPEAL NO: 09A-UI-10767-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/19/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Riek Y. Ruei (claimant) appealed a representative's June 15, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Farmland Foods, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 12, 2009. The claimant participated in the hearing. Becky Jacobsen appeared on the employer's behalf and presented testimony from one other witness, Miguel Bautista. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely? Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on June 15, 2009. The claimant denied receiving the decision; he did make a move from his prior address in Storm Lake to Omaha at some point over the summer. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 25, 2009. The claimant became aware of the disqualification through communications with the local Agency office in Storm Lake; he indicated he was instructed by them that he needed to make an appeal by coming into their office. He was unable to do so until mid July. The appeal was not filed until it was postmarked on July 23, 2009, which is after the date noticed on the disqualification decision.

The claimant started working for the employer on January 22, 2009. He worked full time as a production worker on the second shift at the employer's Denison, Iowa pork processing facility. His last day of work was April 18, 2009.

On April 18 the claimant was working on a machine for which he was not qualified. He was injured while working on the machine, pinching his finger, possibly due to failing to follow proper lock out/tag out procedures. After the claimant went to the nurse's station for the injury, Mr. Bautista, the loin line supervisor, and another manager had a discussion with the claimant about the incident. The other manager indicated to the claimant that due to the incident, when the claimant returned to work on Monday, April 20, there would be an investigation for a potential safety violation which could result in the claimant's discharge; he indicated the claimant's only other option was to quit at that time. The claimant signed a voluntary quit form at that time rather than report for the safety investigation and face possible discharge the following Monday.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 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 record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of

the appeal. See, Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that his separation was not "voluntary" as he had not desired to end the employment; he argues that it was the employer's action of indicating that if he stayed there would be an investigation into a potential safety violation which could lead to a discharge which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as leaving due to a belief that the employee was being or would be discharged, where the employer had not made a discharge decision. 871 IAC 24.25.

The claimant left rather than go through an investigation that might have lead to a discharge; however, no discharge decision had actually been made. Therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because a reprimand has been given or might be given is not good cause. 871 IAC 24.25(28). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's June 15, 2009 decision (reference 01) is affirmed. The appeal in this case is treated as timely. The claimant voluntarily left his employment without good cause attributable to the employer. As of April 18, 2009, benefits are withheld until such time as the claimant 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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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs