IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TERELLE BRIDER
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL NO. 11A-UI-09398-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/17/11
Claimant: Appellant (1)

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 24, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 8, 2011. Claimant participated. Employer participated by Sarah Fiedler, claim administrator. The record consists of the testimony of Terelle Brider and the testimony of Sarah Fiedler. Official notice is taken of agency records.

ISSUES:

Whether the claimant filed a timely appeal; and

Whether the claimant was separated from his employment for any disqualifying reason.

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 24, 2011, 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 July 4, 2011, or received by the Appeals Section on that date. Since July 4, 2011, fell on a legal holiday, the due date was extended as a matter of law to July 5, 2011. The claimant's appeal was filed on July 19, 2011. The claimant did not receive a copy of the representative's decision and did not know his claim had been denied until he went to his local Workforce office. He then filed his notice of appeal.

The employer is a temporary employment agency. The claimant was hired on October 28, 2010. He was given written employment policies and was told that any absences had to be reported to the employer. He also signed a separate document, which stated that if an assignment ended, he would contact the employer within three business days for a new

assignment. If he failed to contact the employer, he would be considered a voluntary quit. He was given a copy of that document.

The claimant obtained an assignment at Winegard, which is a satellite dish manufacturing company. Winegard required the claimant to call an attendance number if he was not going to report to work. This requirement was in addition to the employer's requirement that it be notified if an employee was not coming to work. The claimant's last day of work was March 3, 2011.

On March 7, 2011, the claimant called the Winegard attendance line and notified Winegard that he would not be at work on March 7, 2011, and March 8, 2011. He did not notify the employer that he would be gone. The claimant was scheduled to work on March 9, 2011, but he again called Winegard to report that he would be absent. He did not notify the employer. The reason for the claimant's absence was that he was taking his mother-in-law to the doctor.

The claimant tried to return to work at Winegard on March 10, 2011. Winegard would not allow him to return unless he got a doctor's slip stating that he had taken his mother-in-law to the doctor. The claimant did not provide the slip. The claimant did not contact the employer. The employer did not find out that the claimant had not been reporting for work until March 17, 2011. The clamant came to the employer on March 17, 2011, to pick up his paycheck.

The claimant was deemed a voluntary quit for his failure to show up for work on March 7, 2011; March 8, 2011; and March 9, 2011; and to give notice to his employer that he would be absent for those days.

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 testified that he did not receive a copy of the representative's decision and did not know there was any appeal deadline. He found out that his benefits had been denied when he

checked in at his local Workforce center. The claimant did not have a reasonable opportunity to assert an appeal in a timely fashion. The administrative law judge accepts the claimant's testimony that he did not receive a copy of the representative's decision and that he filed an appeal when he finally knew that his claim for benefits had been denied. 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.

871 IAC 24.25(4) 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:
>
> (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The next issue is whether the claimant was separated from his employment for any disqualifying reason. The claimant was absent from work on three days: March 7, 2011; March 8, 2011; and March 9, 2011. The claimant did not notify the employer. He only notified the attendance line at the employer's client, that is, the employer where the claimant had been assigned to work. The claimant knew that his employer was Team Staffing Solutions. He knew he was supposed to notify the employer as well as the employer's client if he was unable to work. Under Iowa law, a no-call/no-show for three consecutive workdays is deemed a voluntary quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The decision of the representative dated June 24, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/css