IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BEVERLY V SATTLER
Claimant

HY-VEE INC
Employer

APPEAL NO: 09A-UI-16831-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/26/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Beverly V. Sattler (claimant) appealed a representative's August 24, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2009. The claimant participated in the hearing. Traci McKoon appeared on the employer's behalf. 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? Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on August 24, 2009. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 3, 2009. The appeal was not filed until it was faxed on November 5, 2009, which is after the date noticed on the disqualification decision.

The claimant did not get her mail because she had moved from her prior address in Iowa to New Jersey, and her estranged husband would not forward her mail to her. In late September she spoke to an Agency representative who explained that a disqualification decision had been issued. He mailed a copy of a decision to her, but the decision he mailed was not the actual disqualification decision itself, but was a summary decision (reference 03) issued on the same day. The summary decision did not contain the information regarding the claimant's appeal rights. The claimant did not know she needed to appeal until she took the copy of the summary decision to the welfare office in New Jersey and was told she needed to file an appeal.

The claimant started working for the employer on October 8, 2005. She worked part time (15 hours or more per week) as a clerk at the Chinese food counter at the employer's Burlington, Iowa store. Her last day of work was July 5, 2009. She voluntarily quit that day in order to move back to New Jersey to be closer to family and to escape an abusive domestic relationship. She had advised the employer in approximately mid-June that she would be leaving when she was able to arrange transportation back to New Jersey; on July 5 she advised the employer that would be her last day. The claimant's job was not in jeopardy had she remained available to work the job. The abusive domestic situation had not carried over to or into the workplace.

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).

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving to move to another region is not good cause attributable to the employer. 871 IAC 24.25(2). While leaving due to an abusive domestic situation is a good and even compelling personal reason for leaving, the claimant could not return even after ten days, and so the separation cannot be attributed to the employer. 871 IAC 24.25(20). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's August 24, 2009 decision (reference 01) is affirmed. The appeal is treated as timely. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 5, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs