IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LEONOR L GARCIA
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL NO. 12A-UI-07421-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/13/11
Claimant: Appellant (2)

Section 96.5(2)(a) - Discharge
Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Leonor Garcia filed an appeal from the May 9, 2012, reference 01 decision that denied benefits. After due notice was issued, a hearing was held on August 7, 2012. Ms. Garcia participated personally and was represented by William Bribriesco, attorney at law. Mr. Bribriesco presented testimony through Ms. Garcia and through Pablo Ledezma. Spanish-English interpreter Ninfa Redmond assisted with the hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-07422-JTT. Claimant's Exhibits One through Eight were received into evidence. Department Exhibits D-1 and D-2 were received into evidence.

The employer did not respond to the hearing notice mailed to the employer on July 17, 2012 and did not participate on the August 7, 2012 hearing. This matter was originally set for hearing on July 17, 2012. The employer did not respond to the hearing notice mailed to it on June 28, 2012 regarding the July 17, 2012 hearing date.

ISSUES:

Whether the claimant's appeal was timely.

Whether the claimant separated from her 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 May 9, 2012, Iowa Workforce Development mailed a copy of the May 9, 2012, reference 01, decision to Leonor Garcia's last known address of record. Ms. Garcia did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 19, 2012. On June 12, 2012, Iowa Workforce Development mailed a copy of the June 12, 2012, reference 02, overpayment decision to Ms. Garcia's last known address of record. Ms. Garcia received that decision in a timely manner, prior to the June 22, 2012 deadline for appeal. Ms. Garcia does not read English. Ms. Garcia's son, Pablo Ledezma, read the letter and took it to attorney William Bribriesco, whose office prepared an appeal and mailed

it the same day. The appeal arrived in an envelope that bears a June 20, 2012 postage meter mark.

Leonor Garcia was employed by West Liberty Foods as a full-time production worker from 1979 and last performed work for the employer on September 30, 2011. On August 1, 2011, a doctor indicated that Ms. Garcia had reached maximum medical improvement, MMI, in connection with work-related issues with her shoulders that had prompted an earlier surgery. Up until September 30, 2011, the employer had accommodated Ms. Garcia's medical restrictions through a light-duty work assignment. Effective September 30, the employer refused to continue the light-duty assignment. The employer indicated it had no work that would meet Ms. Garcia's medical restrictions, though the medical restrictions were the same for which the employer had provided light-duty work up to that point. Ms. Garcia attempted to return to the light-duty work in early November 2011, but the employer declined to make work available.

Ms. Garcia established a claim for unemployment insurance benefits that was effective November 13, 2011. Workforce Development categorized Ms. Garcia as a group "3" claimant, a person who had been laid off. Ms. Garcia received $7,728.00 in unemployment insurance benefits for the period of November 13, 2011 through April 21, 2012.

On April 20, 2012, Ms. Garcia, with the help of Mr. Bribriesco, entered into a workers' compensation settlement agreement with West Liberty Foods. As a condition of the settlement agreement, Ms. Garcia had to agree to resign from the employment at West Liberty Foods. The employer had up to that point continued to take the position that the employer had no work that would meet Ms. Garcia medical restrictions.

Ms. Garcia discontinued her claim for unemployment insurance benefits after the benefit week that ended April 21, 2012.

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 at issue was filed on June 20, 2012, the postage meter mark on the envelope in which the appeal arrived.

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 the appellant did not have a reasonable opportunity to file a timely appeal of the disqualification decision before the May 19, 2012 deadline because she had not received the decision. Ms. Garcia did not receive a copy of the May 9, 2012, reference 01, disqualification decision until the Appeals Section mailed her a copy on June 29, 2012. This was after Ms. Garcia filed a timely appeal of the June 12, 2012, reference 02, overpayment decision.

The evidence establishes a late appeal that was late either due to the actions of Workforce Development or the United States Postal Service. Good cause exists to treat the appeal as a timely appeal. See Iowa Administrative Code rule 871 IAC 24.35(2). The administrative law judge has jurisdiction to consider the merits of the appeal and enter a decision on the merits.

The weight of the evidence establishes that the employer laid off Ms. Garcia effective September 30, 2011. The April 20, 2012 settlement agreement only clarified that the layoff was permanent. Ms. Garcia did not quit on April 20, 2012, despite the requirements of the

settlement agreement. The separation had already occurred on September 30, 2011, when the employer refused to make further work available to Ms. Garcia. The evidence indicates that the employer had the ability to continue to make work available that would meet Ms. Garcia's medical restrictions. The medical restrictions were due to work-related injury and the employer had a duty to provide reasonable accommodations that would allow Ms. Garcia to continue in the employment. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993).

Because the separation took place in the form of a layoff rather than as a discharge for misconduct or a voluntary quit without good cause attributable to the employer, the separation would not disqualify Ms. Garcia for unemployment insurance benefits. Ms. Garcia was and is eligible for unemployment insurance benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The claimant's appeal was timely. The Agency representative's May 9, 2012, reference 01, decision is reversed. The claimant was laid off effective September 30, 2011. 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/kjw