IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MELODIE M NASH
Claimant

KAISER CONTRACT CLEANING SPECIALISTS INC
Employer

APPEAL NO. 12A-UI-03572-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/12/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Melodie Nash filed an appeal from the March 23, 2012, reference 02 decision that denied benefits. After due notice was issued, a hearing was held on April 24, 2012. Ms. Nash participated. Allison Hescke represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-03571-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether Ms. Nash's appeal from the March 23, 2012, reference 02 decision was timely.

Whether Ms. Nash's voluntary quit was for good cause attributable to the employer.

Whether there is good cause to treat Ms. Nash's appeal as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 23, 2012, Iowa Workforce Development mailed a copy of the March 23, 2012, reference 01, decision to Melodie Nash's last-known address of record. The decision denied benefits based on an agency conclusion that Ms. Nash had voluntarily quit her employment with Packers Sanitation Services, Inc., without good cause attributable to the employer. Ms. Nash received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 2, 2012. On or about March 25, 2012, Ms. Nash drafted an appeal letter and mailed it to the Appeals Section. On April 6, 2012, after hearing nothing back in response to the appeal letter she had mailed, Ms. Nash went to the Waterloo Workforce Development Center, completed an appeal form, and delivered the completed form to the staff at the Workforce Development Center. The Appeals Section received the appeal by fax that same day.

The employer operates under two different names and employer account numbers: Packers Sanitation Services, Inc., and Kaiser Contract Cleaning Specialist, Inc. On March 23, 2012, Iowa Workforce Development has also mailed a copy of the March 23, 2012, reference 02, decision to Ms. Nash's last-known address of record. The decision denied benefits based on an agency conclusion that Ms. Nash had voluntarily quit her employment with Kaiser Contract Cleaning Specialists, Inc., without good cause attributable to the employer. Ms. Nash received the decision in a timely manner, prior to the deadline for appeal. This second decision also contained a warning that an appeal must be postmarked or received by the Appeals Section by April 2, 2012. Ms. Nash's appeal was intended to be from both decisions and the Appeals Section treated it as such.

The employer provides overnight sanitation services to a Tyson production plant in Waterloo. Melodie Nash was employed by Packers Sanitation Services, Inc., a/ka/ Kaiser Contract Cleaning Specialists, Inc., as a full-time sanitation worker from 2010 and last performed work for the employer on a shift that began at 11:30 p.m. on January 12, 2012. Ms. Nash was then off work due to illness through January 22, 2012. Ms. Nash decided not to return to the employment. Ms. Nash attempted to reach the employer by telephone and text message to convey this information. When that failed to prompt a response, Ms. Nash ceased her attempts to contact the employer. The employer subsequently documented a job abandonment under the employer's policy concerning no-call, no-show absences.

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 in this case was filed on April 6, 2012, which was the day on which Ms. Nash delivered the completed appeal to the Workforce Development staff and the day the Appeals Section received the appeal by fax. But the weight of the evidence indicates that Ms. Nash had mailed an appeal on or about March 25, 2012. The weight of the evidence indicates that either the United States Postal Service lost the letter or Workforce Development lost the letter.

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 have a reasonable opportunity to file a timely appeal and would have filed a timely appeal but for the Postal Service or Workforce Development misplacing her appeal letter. See 871 IAC 24.35(2). The administrative law judge concludes there is good cause to treat Ms. Nash's April 6, 2012 appeal as a timely appeal. The administrative law judge has jurisdiction to rule on the merits of the appeal.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:
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> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by

> a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy.
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
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> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
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> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

When a worker is absent three days without notice to the employer in violation of company rule, the worker is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer. Ms. Nash has presented insufficient evidence to support her assertion that she quit upon the advice of a doctor due to a medical condition. Ms. Nash provided the employer with no medical documentation to indicate a need to quit the employment for a medical reason. Ms. Nash presented no medical documentation for the hearing. Even if Ms. Nash had provided medical documentation, there would still be insufficient evidence to establish a quit that was for good cause attributable to the employer. If the administrative law judge had found a medical condition aggravated by the employment, the evidence would still indicate a lack of appropriate notice to the employer concerning that condition, no request for accommodations prior to the quit, and no opportunity for the employer to respond to a request for accommodations. If the administrative law judge had found a quit due to a non-work-related medical condition, the lack

of medical documentation, along with Ms. Nash's lack of recovery and failure to return to offer her services, would prevent the quit from being for good cause attributable to the employer.

The weight of the evidence establishes a quit for personal reasons. Because Ms. Nash voluntarily quit the employment without good cause attributable to the employer, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Nash.

DECISION:

The Agency representative's March 23, 2012, reference 02, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs