

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEX T VO
Claimant

CITICORP CREDIT SERVICES INC USA
Employer

APPEAL NO: 10A-UI-00330-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/16/09
Employer: Appellant (1)

Section 96.5-1-d – Voluntary Quit/Family Member Illness
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 16, 2009, reference 01, that held he voluntarily quit without good cause on May 13, 2009, and benefits are denied. A telephone hearing was held on February 18, 2010. The claimant participated. Cheryl King, Senior Supervisor, and Ross Gardner, Attorney, participated for the employer. Claimant Exhibit A and Employer Exhibit A was received as evidence.

ISSUES:

Whether the appeal is timely.

Whether the claimant quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked in the printing department beginning December 19, 1998, and last worked for the employer about May 1, 2009. The claimant requested a vacation/planned holiday leave from Supervisor King for two weeks that was approved. The claimant was expected to return to work on May 13. The claimant went to visit his ill mother in Florida.

The claimant called King on May 13 stating he was quitting his job, and would look for work in Florida. King requested he turn in his security badge and submit a resignation letter. Claimant's wife (an employee) did turn in his badge, but when the employer did not receive a resignation letter, it affected his termination as a quit on June 1.

The claimant returned from Florida to Iowa about June 20, but he did not contact his employer about whether he could return to work. The claimant filed his claim effective August 2, 2009, and then made claims for benefits on a weekly basis through the week ending November 14. The department mailed a decision to his address of record on September 16 that denied benefits. The claimant states he did not receive it. The claimant moved in December to his

current address of record, and the department changed it at his request. The claimant submitted an appeal to his local Workforce Center on January 7, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

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 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal. Even if the claimant did not receive the denial of benefits decision, any concerned person would have checked with workforce development within a reasonable period of time why he or she was not receiving benefits. While the claimant did claim for benefits through the week ending November 14, he offered no explanation why he stopped or waited almost two months (January 7) to check with the department this matter.

Iowa Code section 96.5-1-c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The administrative law judge further concludes that the claimant voluntarily left employment due to family member illness, and chose to quit employment rather than return to work on May 13, 2009 that is a voluntary quit without good cause attributable to the employer. In addition when the claimant returned to Iowa on June 20, he made no attempt to approach the employer about further employment.

DECISION:

The department decision dated September 16 2009, reference 01, is affirmed. The claimant did not file a timely appeal. The claimant voluntarily quit without good cause attributable to the employer effective May 13, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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