

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDIE N WILLIAMS

Claimant

APPEAL NO: 14A-UI-13459-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 11/30/14

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Brandie N. Williams (claimant) appealed a representative's December 15, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2015. The claimant participated in the hearing. Maris Masengill 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 should 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 December 15, 2014. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 26, 2014. The claimant did not receive the decision until December 26, 2014. The appeal was not filed until she faxed it on December 30, 2014, which is after the date noticed on the disqualification decision.

The claimant started working for the employer on October 16, 2013. She worked full time (about 36 hours per week) as a kitchen worker in the employer's Waukee, Iowa store. Her normal schedule was to work from about 5:00 a.m. until about 1:00 p.m., Monday through Friday.

On November 4 the claimant worked until about 9:00 a.m. At that time she had a conversation with the store manager regarding the number of vacation hours she had coming to her; he was saying that she had 14 hours, rather than the 40 hours she believed she was due. It subsequently turned out that there had been a miscalculation on the part of the corporate office,

but rather than staying and contacting the corporate office to try to work out the discrepancy, the claimant became upset, said she was giving her notice, and walked out of the store. She left the premises in her car. The employer therefore concluded that she had quit and had done so effective immediately.

She did call Masengill, the area supervisor, sometime shortly after leaving the premises, but the store manager had already informed Masengill that the claimant had walked out and said she was giving her notice. About 23 minutes after leaving the claimant returned to the store and sought to return to her shift, but she was told she could not. There were subsequent conversations between the claimant and Masengill in December about the possibility of the claimant being rehired, but as of the date of the hearing no rehiring had been arranged.

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 rule 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 intent to quit can be inferred in certain circumstances. The claimant walking out and indicating she was giving notice of quitting does exhibit an intent to quit. 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. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The appeal in this case is treated as timely. The representative's December 15, 2014 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 4, 2014, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs