

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TEDDY WINTERS
Claimant

APPEAL NO. 09A-UI-07294-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAGEN INC
Employer

**Original Claim: 03/15/09
Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Teddy Winters (claimant) appealed an unemployment insurance decision dated April 10, 2009, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Fagen, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 5, 2009. The claimant participated in the hearing. The employer participated through Ashley Hoffman, Human Resources Assistant. Exhibit D-1 was admitted 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.

ISSUE:

The issue is whether the claimant's appeal is timely and, if so, whether his voluntary separation from employment qualifies him to received unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on April 10, 2009, but the claimant had moved and did not receive the decision. He testified he did file a change of address with the United States Postal Office and Iowa Workforce Development. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 20, 2009. The appeal was not filed until May 13, 2009, which is after the date noticed on the disqualification decision.

The claimant was employed as a full-time forklift operator from February 11, 2008 through March 13, 2009 at the Grand Junction, Iowa, work site. He requested a transfer to Texas on March 13, 2009 but contends he did not want to transfer at that time. The claimant testified he signed transfer paperwork and when questioned why he signed paperwork when he did not want to transfer immediately, he responded that he was in shock so he just signed it. He reported his supervisor told him that his transfer was effective immediately and walked the claimant to his vehicle. However, the local office cannot approve a transfer without the involvement of the corporate office, since a local office would not know where other jobs might be available. The corporate office knew nothing about

a transfer but was advised the claimant walked off the job. Both parties admitted the claimant returned to work that day and asked to have his job back. The employer told the claimant he was considered to have quit because he walked off the job. Continuing work was available at the work site had the claimant not requested a transfer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 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). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6-2, and the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

The substantive issue to be determined in this case is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant initiated his separation when he asked to transfer on March 13, 2009. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by requesting to transfer, signing some type of paperwork and walking off the job on March 13, 2009. Continuing work was available. The claimant denies he walked off the job but admits he did go back to the employer to request his job back. There would have been no reason to request his job back if he had not voluntarily quit.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

DECISION:

The claimant's appeal was timely. The unemployment insurance decision dated April 10, 2009, reference 02, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw