IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ANASTYN JO ENGELKENS Claimant **KUHL CORP OF WAVERLY** Employer	**APPEAL NO: 21A-UI-17109-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/18/20** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant, Anastyn Engelkens, filed a late appeal from the January 27, 2021, reference 01, decision that held the claimant was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 5, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 24, 2021. The claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the January 27, 2021, reference 01, decision and the KFFV record regarding the scheduled fact-finding interview.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely. Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed by Kuhl Corporation of Waverly, doing business as Taco Johns as a full-time laborer from May 2020 until August 10, 2020, when she voluntarily quit. The claimant performed many tasks as part of the employment. These included cooking, cleaning, washing dishes, operating the register, and manning the drive-through window. Laura Kuhlmann is the business owner and was the claimant's supervisor. The claimant provided the employer a two-week notice, but then elected to make the quit effective one week into the notice period.

The claimant cites two reasons for her quit. The claimant voluntarily quit in response to the employer allowing customers to enter the restaurant without wearing a mask. The claimant has asthma and was concerned about being exposed to COVID-19. The claimant also left in response to the employer making harassing statement about the claimant's health issues. On the day the claimant provided her two-week notice, the employer made fun of the claimant

based on the claimant calling an ambulance out of concern that that claimant was having a heart attack. The claimant had been off-duty at the time she had summoned the ambulance. On the day the claimant gave her two-week notice, the employer told the claimant not to call the ambulance while she was working and then laughed.

A month before the claimant gave her quit notice, the employer required the claimant to work on the same day the claimant was discharge from the hospital in connection with an ankle injury. The employer required the claimant to sign a document that stated the claimant wanted to work despite the injury. The employer said the claimant needed to sign the document so the claimant could not sue the employer if she suffered further injury while working. While the claimant was working under those circumstances, the employer laughed at the claimant's gait as the claimant walked through the kitchen.

When the claimant needed to switch from wearing a mask to a face shield due to breathing issues, the employer told the claimant she should not be receiving special treatment just because she could not breathe.

On January 27, 2021, Iowa Workforce Development mailed the January 27, 2021, reference 01, decision to the claimant's Waverly, Iowa last-known address of record. The reference 01 decision held the claimant was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 5, 2020 without good cause attributable to the employer. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by February 6, 2021 or was received by the Appeals Bureau by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline for appeal would be extended to the next working day. February 6, 2021 was a Saturday and the next working day was Monday, February 8, 2021. The claimant did not receive the decision that was mailed to her on January 27, 2021 and did not file an appeal by the February 8, 2021 extended appeal deadline.

On August 4, 2021, the claimant field an online appeal. That claimant indicated in the appeal that she was appealing from a January 26, 2021 decision. The claimant indicated in the appeal that she received the decision on January 1, 2018, which would not be possible. The claimant indicated in the appeal that never received a phone call or a decision. The claimant had recently been in contact with an Iowa Workforce Development representative had at that time learned of the decision that disqualified her for benefits.

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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

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 evidence in the record establishes good cause to treat the late appeal as a timely appeal. The claimant did not receive the January 27, 2021, reference 01, decision when it was mailed to her and, therefore, did not have an opportunity to file an appeal by the extended February 8, 2021 appeal deadline. The claimant did not learn of the decision until she contacted Iowa Workforce Development in August 2021 and then promptly filed an online appeal on August 4, 2021. The weight of the evidence establishes that the United States Postal Service failed to deliver the decision to the claimant. See Iowa Administrative Code rule 871-24.35(2) (regarding good cause for a late filing attributable to the United States Postal Service). The administrative

law judge has jurisdiction to enter a decision on the merits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The evidence in the record establishes a voluntary quit due to good cause attributable to the employer. The claimant's decision to leave the employment was based in large part on a pattern of harassing and mocking behavior the employer directed at the claimant. An employer has the right to expect decency and civility from its employees. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Employees have a similar right to expect decency and civility from their employer. The employer's mocking, demeaning, and harassing comments about the claimant's health issues created intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. The claimant is eligible for benefits, provided the claimant meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The claimant's appeal from the January 27, 2021, reference 01, decision was timely. The decision is reversed. The claimant voluntarily quit with good cause attributable to the employer, based on intolerable and detrimental working conditions. The quit was effective August 10, 2020. The claimant is eligible for benefits, provided the claimant meets all other eligibility requirements. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

__September 29, 2021__
Decision Dated and Mailed

jet/mh