IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEVE W LUNDGREN
Claimant

1ST CALL LAWN CARE LLC
Employer

APPEAL NO: 11A-UI-01673-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/23/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Steve W. Lundgren (claimant) appealed a representative's September 29, 2010 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from 1st Call Lawn Care, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 7, 2011. The claimant participated in the hearing. Jason Thompson appeared on the employer's behalf and presented testimony from two other witnesses, Jamie Oberheu and Scott Thompson. 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 then last-known address of record on September 29, 2010. The claimant received the decision within a few days thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 9, 2010. An appeal was not received until February 11, 2011 when an appeal for the claimant was faxed to the Appeals Section from a local Agency office, which is after the date noticed on the disqualification decision.

The claimant had completed an appeal in early October 2010, placed it in a properly addressed and stamped envelope, and then deposited the appeal into the United States Postal Service custody on October 4, 2010. That appeal was not received by the Appeals Section. When the claimant heard nothing further regarding his appeal, he made inquiries to his local Agency office, who suggested he needed to allow more time. When nothing further had been heard by

early February 2011, a representative at his local Agency office contacted the Appeals Section to inquire, and learned that no appeal had been received. The claimant then resubmitted an appeal by fax from the local Agency office on February 11.

The claimant started working for the employer on July 20, 2010. He worked full time as a laborer. His last day of work was August 31, 2010.

On August 31 the claimant and the rest of the crew with which he worked were about an hour later than expected arriving at the employer's worksite in Clive from the employer's office in Waterloo, a drive that would take between two hours and two hours and 15 minutes. Scott Thompson, the project manager, had reprimanded them for being late and had referred to them as "retards." He also counseled the claimant with regard to what he perceived as a lack of effort working once he arrived at the worksite. The claimant was displeased with Scott Thompson's handling of the matter, and asked for a meeting with Jason Thompson, the president. A meeting was set up for 9:00 a.m. on September 1.

During the meeting the claimant expressed his displeasure regarding the reprimand for being late and of Scott Thompson's referring to the employees as "retards." He proceeded to call Scott Thompson names himself, including calling Scott Thompson a "retard." The employer expressed its concerns that employees including the claimant were slow making the trip from Waterloo to Clive because they were making additional stops such as for lunch which they were not then reporting as break times, but were rather claiming those stops as part of their paid travel time. The employer was not expecting the employees to speed, but did not believe the trip merited a paid drive time of two and a half hours as was being claimed by the employees. As the discussion became more heated, the claimant opened the door to leave the office, telling Jason Thompson that he could "take the job and shove it up your a - -," and proceeded to head for his vehicle. Jason Thompson responded by telling the claimant he should not return or the police would be called.

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 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 his employment, he 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 claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he 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 him. Iowa Code § 96.6-2. The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment unlawful, detrimental, or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's September 29, 2010, decision (reference 04) is affirmed. The appeal in this case is treated as timely. The claimant voluntarily left his employment without good cause attributable to the employer. As of September 1, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

____
Lynette A. F. Donner
Administrative Law Judge

____
Decision Dated and Mailed

ld/pjs