

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURIE HRDY
Claimant

APPEAL NO. 07A-UI-00176-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

OC: 12/03/06 R: 01
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Laurie Hrdy (claimant) appealed an unemployment insurance decision dated December 20, 2006, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Dollar General (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 January 23, 2007. The claimant participated in the hearing. The employer provided a telephone number but was not available when called for the hearing and, therefore, did not participate. Based on the evidence, the arguments of the party, 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 her voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and 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 December 20, 2006. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 30, 2006. The appeal was not filed until January 4, 2007, which is after the date noticed on the disqualification decision.

The claimant was employed as a full-time key holder from October 12, 2005 through November 17, 2006 when she voluntarily quit by walking off the job. She and her supervisor got into an argument on the day she quit. The claimant had mistakenly requested time off in January 2007 when she actually wanted time off in November 2006. The employer was upset with this, as well as the fact that the claimant was off with her deposits. Instead of the usual \$350.00 cash to start the day, the employer was now beginning with \$550.00 but the claimant was not aware of that fact as she had been on vacation and there were no notes left to advise

her of the change. The claimant calculated the drawer based on the starting amount of \$350.00 and her drawer was off. The supervisor said to her, "I don't know where your head is, if it's up your butt or whatever." The claimant was upset with how she was being treated and walked out crying.

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, 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 because she did not receive the disqualification decision.

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 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 timely filed pursuant to Iowa Code section 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 next issue to be determined is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

Iowa Code section 96.5-1 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.

871 IAC 24.25(22) and (28) provide:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(22) The claimant left because of a personality conflict with the supervisor.

(28) The claimant left after being reprimanded.

The claimant quit her employment because of her heated conversation with her supervisor on November 17, 2006. Although the supervisor did make one disparaging remark towards the claimant, there is no evidence of any ongoing abuse. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. She has not satisfied that burden and benefits are denied.

DECISION:

The unemployment insurance decision dated December 20, 2006, reference 01, is affirmed. The appeal in this case was timely. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid

wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css