IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATIE A KRASNODEMSKI
Claimant

EXPRESS SERVICES INC
Employer

APPEAL NO. 10A-UI-07258-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 08/16/09
Claimant: Appellant (4)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury
Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Katie A. Krasnodemski (claimant) appealed a representative's April 21, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Express Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2010. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. 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 can be treated as timely?

Did the claimant voluntarily quit the assignment for a disqualifying reason?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on April 21, 2010. The decision was misdelivered by the postal service to one of the claimant's neighbors; she did eventually receive the decision, but not until May 13 when it was forwarded to her by the landlord. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 1, 2010. The appeal was not filed until it was faxed on May 18, 2010, which is after the date noticed on the disqualification decision.

The employer is a temporary employment firm. The claimant began a temp-to-hire assignment with the employer's Dubuque, Iowa, area business client on August 24, 2009. She worked full-time as a data entry clerk in the front office on an 11:00 p.m.-to-7:00 a.m., Monday evening-through-Saturday morning schedule. Her last day on the assignment was February 11, 2010. As of that date, she

was compelled by her doctor to leave the assignment; she was pregnant, and the doctor placed her on bed rest for the remainder of her pregnancy. The claimant learned by February 11 that the business client was not going to hold her position until she could return after the pregnancy and maternity leave. She informed the employer of her need to leave the assignment, and the employer was also aware the business client would not be returning her to the assignment after the end of the maternity leave.

The claimant gave birth on February 25. Her doctor released her as able to work without restrictions as of March 15. The claimant informed the employer on March 15 that she was now able and available for work; however, no other work was then available for her with the employer.

The claimant established an unemployment insurance benefit year effective August 16, 2009, receiving benefits for one week at that time before starting her employment with the employer. She did not reopen her claim until she filed an additional claim effective March 14, 2010.

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, she would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for medical or health reasons, the quit is disqualifying, at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

Where a claimant has been compelled to leave employment due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by her physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35).

Here, the claimant was released to return to work; she did seek to return to work with the employer, but her position was no longer available to her. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Even though the business client had a good business reason for proceeding to fill the claimant's position and the employer may have had no other position available for the claimant, the separation is with good cause attributable to the employer and benefits are allowed.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required; no evidence to the contrary has been provided in this case. 871 IAC 24.22(1)(a). For the times in which the claimant has had an active claim for unemployment insurance benefits, she has been able and available for work.

DECISION:

The representative's April 21, 2010 decision (reference 02) is modified in favor of the claimant. The appeal is treated as timely. The claimant voluntarily left her employment with good cause attributable to the employer. The claimant is able to work and available for work effective the week beginning March 14, 2010. Benefits are allowed, if the claimant is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/kjw