IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ESPERANZA LAZARO-MANUEL
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 12A-UI-11254-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/22/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Esperanza Lazaro-Manuel filed an appeal from the August 10, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 30, 2012. Ms. Lazaro-Manuel participated. Dzemal Grcic, Human Resources Clerk, represented the employer. Spanish-English interpreter Anna Pottebaum assisted with the hearing. Exhibit A was received into evidence.

ISSUES:

Whether there is good cause to treat Ms. Lazaro-Manuel's appeal as timely. The administrative law judge concludes there is.

Whether Ms. Lazaro-Manuel separated from the employment for a reason that disqualifies her for unemployment insurance benefits. The administrative law judge concludes she did.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Esperanza Lazaro-Manuel is a Spanish-speaking person. On August 10, 2012, Iowa Workforce Development mailed a copy of the August 10, 2012, reference 01 decision to the last-known address of claimant Esperanza Lazaro-Manuel. The decision included an August 20, 2012 deadline for appeal. The decision denied benefits.

Ms. Lazaro was in an auto accident on August 10, 2012 and remained hospitalized until September 20, 2012. The August 10, 2012 decision was received at Ms. Lazaro-Manuel's address of record on or about August 15, 2012. While Ms. Lazaro-Manuel was hospitalized, she was dependent upon her sister and others for receiving her mail and responding to her mail. It was not until September 17, 2012, that Ms. Lazaro-Manuel, still hospitalized, was able to get assistance with filing an appeal from the August 10, 2012 decision. On September 17, Ms. Lazaro-Manuel signed an appeal form that had been prepared for her. On September 19, 2012, the appeal form was faxed to and received by the Appeals Bureau.

Ms. Lazaro-Manuel was employed by Tyson Fresh Meats as a full-time production worker. She started the employment in 2010 and last performed work for the employer on June 27, 2012. Ms. Lazaro-Manuel was then a no-call/no-show for shifts on June 29 and July 2. Ms. Lazaro-Manuel was absent on July 3 and provided proper notice to the employer by calling the absence reporting line at least 30 minutes prior to the scheduled start of her shift. Ms. Lazaro-Manual was then a no-call/no-show on July 5, 6, 9, and 10, 2012. On July 12, Ms. Lazaro-Manuel appeared at the workplace with a doctor's note that covered the absences and that released her to return to work the next day. The employer told her that the employment was ended based on her no-call/no-show absences.

The employer has both a written attendance policy and a written leave of absence policy. These were reviewed with Ms. Lazaro-Manuel in Spanish at the start of her employment. Under the written policy, an employee who is absent for five consecutive shifts without notifying the employer is subject to termination of employment. An employee who needs to be absent is expected to use the automated absence reporting line at least 30 minutes prior to the scheduled start of the shift. An employee desiring an extended leave is required to make a formal request prior to the beginning of the absence. Ms. Lazaro-Manuel had not requested a leave of absence in connection with the dates she missed in June and July 2012. Ms. Lazaro-Manuel provided proper notice in connection with only one of the absences.

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-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 871 AC 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 871 IAC 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 record shows that Ms. Lazaro-Manuel was incapacitated until September 20, 2012 and did not have a reasonable opportunity to file an appeal by the August 20, 2012 deadline. Given Ms. Lazaro-Manuel's injuries and hospitalization, the delay in filing the appeal until September 17, 2012 was reasonable. There is good cause to treat the appeal as a timely appeal.

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.

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.

An employee who is absent three days without notifying the employer in violation of company policy is presumed to have voluntarily quit without good cause attributable to the employer. See Iowa Admin. Code section 871 IAC 25.25(4).

Ms. Lazaro-Manuel was absent without notifying the employer on June 29, July 2, 5, 6, 9 and 10, 2012. The final four no-call/no-shows were for consecutive shifts. Based on the Administrative Code rule, the administrative law judge concludes that the employer reasonably concluded Ms. Lazaro-Manuel had quit the employment and that Ms. Lazaro-Manuel did indeed voluntarily quit the employment without good cause attributable to the employer through the consecutive no-call/no-show absences in violation of company rule. Ms. Lazaro-Manuel is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged.

DECISION:

There is good cause to treat the appeal as a timely appeal. The Agency representative's August 10, 2012, reference 01, decision is modified as follows. The claimant voluntarily quit without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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