IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RUTH A ROTHS
Claimant

NEW HAMPTON COMMUNITY SCHOOL
Employer

APPEAL NO: 11A-UI-07272-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/17/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Ruth A. Roths (claimant) appealed a representative's May 13, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from New Hampton Community School (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2011. The claimant participated in the hearing. Bob Ayers appeared on the employer's behalf. One other witness, Steve Nicholson, was available on behalf of the employer but did not testify. 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 last-known address of record on May 13, 2011. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 23, 2011. The Appeals Section did not consider an appeal to have been filed until an appeal was received on June 2, 2011, which is after the date noticed on the disqualification decision.

The claimant had previously made another virtually identical appeal. The only distinction between the two appeals is that one was dated May 20 and the second was dated June 1. Neither appeal identified the employer who was the subject of the appeal, nor did the appeal identify the date or reference number of the decision being appealed. The claimant had intended the May 20 appeal, which was faxed to the Appeals Section on May 23, as being for the representative's decision issued on May 13, 2011 (reference 01), regarding the New

Hampton Community School. The Appeals Section staff which received that appeal erroneously applied that appeal to another decision, a decision issued on May 23, 2011 (reference 02), regarding the employer Paul Ewert D.C., P.C. The claimant had not yet received that decision; the appeal dated June 1, faxed June 2, had been the appeal she had intended to apply to that second decision.

The claimant started working for the employer on January 13, 2000. She worked full time as a para-educator, primarily with special education students. Her last day of work was March 8, 2011. She had submitted her resignation letter approximately two weeks prior, on or about February 23. She intended March 9 to be her last day, but there was no school that day due to weather. Her reason for resigning was that her husband had previously accepted and moved to start working a new job in Arizona; the claimant had remained behind until the couple's house sold. When the house sold, the claimant tendered her resignation to move to Arizona to live with her husband and to seek employment there. The claimant's job remained available to her had she not resigned.

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, misinformation, or delay, or other action 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 her employment, she 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 she 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 her, which generally means that it is a reason attributable to the employer. Iowa Code § 96.6-2. Leaving to relocate, even to be with a spouse who has otherwise left for other employment, is a good personal reason, but not a reason attributable to the employer. 871 IAC 24.25(2), (10). Leaving employment to seek employment elsewhere is also not a cause attributable to the employer. 871 IAC 24.25(3). The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's May 13, 2011 decision (reference 01) is affirmed. The appeal in this case is treated as timely. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 9, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/pjs