IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOY A WINFIELD
Claimant

US POSTAL SERVICE
Employer

APPEAL NO. 14A-UI-13402-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/09/14
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(d) – Voluntary Quit for Medical Reason
Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Joy Winfield filed a late appeal from the November 24, 2014, reference 04, decision that disqualified her for benefits and that relieved the employer of liability for benefits; based on an Agency conclusion that her health-based voluntary quit on or about November 6, 2014 was without good cause attributable to the employer. After due notice was issued, a hearing was held on January 23, 2014. Ms. Winfield participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibits A through G and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUES:

Whether there is good cause to treat the late appeal as timely. There is.

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 24, 2014 Iowa Workforce Development mailed a copy of the November 24, 2014, reference 04, decision to Joy Winfield's last-known address of record. The decision disqualified Ms. Winfield for benefits. The decision contained a warning that an appeal from the decision must be postmarked by December 4, 2014 or received by the Appeals Section by that date. Ms. Winfield did not receive the decision that was mailed to her on November 24, 2014. Ms. Winfield contacted Workforce Development on December 15, 2014 to inquire about the status of her claim and learned at that time that a decision had been entered. On December 15, 2014 Iowa Workforce Development mailed a second decision to Ms. Winfield at her address of record. Ms. Winfield received that decision on December 20, 2014. On December 26, 2014, the day after the Christmas Holiday, Ms. Winfield faxed an appeal to the Appeals Section. Workforce Development offices and the United States Postal Service has been closed on December 25, 2014. The Appeals Section erroneously date-stamped the December 26, 2014 appeal as received on December 29, 2014.

Ms. Winfield was employed by the U.S. Postal Service as a full-time Postal Support Employee from April 2014 until November 6, 2014 when she voluntarily quit. Though Ms. Winfield's employment was full time, she was not "full-time regular" pursuant to the employer's work rules. Ms. Winfield's work hours and duties varied in what was essentially a float position. Ms. Winfield's last work schedule was 11:00 p.m. to 7:30 a.m., though the employer often made her stay longer so that she was working shifts of 10 to 12 hours in length. Ms. Winfield performed her duties standing up and sitting down. The floor upon Ms. Winfield had to stand and walk at work was concrete. Ms. Winfield last performed work for the employer on October 27, 2014. In October, Ms. Winfield began to experience pain in her foot. On October 31, 2014 Ms. Winfield saw a podiatrist. The podiatrist diagnosed plantar fasciitis and directed Ms. Winfield to wear a "cam boot." The podiatrist recommended additional diagnostic tests but warned Ms. Winfield that, due to her particular health insurance policy and carrier, it would take an extended period to get approval for the tests. The podiatrist released Ms. Winfield to return to sedentary work. Ms. Winfield provided her supervisor with a medical excuse restricting her to sedentary work. The doctor's note stated as follows:

> "Pt. is to be sit-down job only with use of camboot. Must be only partial weight bearing when up due to plantar fasciitis, right foot. She is to return to my office in 1 month for reevaluation and determination of work status."

The supervisor advised Ms. Winfield that the employer could not accommodate the medical restriction. Ms. Winfield was aware that the employer had sorting stations where she could sit and perform mail sorting work. Ms. Winfield had utilized such sorting stations previously in the employment. Based on that statement from the employer, Ms. Winfield elected to resign from the employment rather than face discharge at some future point based on continued absences from work. The doctor had not advised Ms. Winfield to quit the employment.

Several weeks after Ms. Winfield separated from the employment, she learned that in addition to the plantar fasciitis diagnosis, she also had a small fracture in her foot.

Ms. Winfield had established an original claim for benefits that was effective February 9, 2014. In connection with her separation from the Postal Service employment, Ms. Winfield established an additional claim for benefits that was effective November 2, 2014. Ms. Winfield has received no benefits in connection with the original claim or the additional claim. Her weekly benefit amount is set at $61. Ms. Winfield commenced her search for new employment upon separating from the postal service and made two or more contacts per week through the benefit week that ended January 17, 2015. Prospective new employers were not inclined to hire Ms. Winfield in light of the cam boot she was still required to wear. Ms. Winfield eventually returned to an old employer, was hired and commenced performing work for the old employer. Ms. Winfield reported zero wages for the four-week period of November 2, 2014 through November 19, 2014. Ms. Winfield reported $70 in wages for the week ending December 6, 2014. Ms. Winfield reported zero wages for the week ending December 13, 2014. Ms. Winfield report $70 in wages for the week ending December 20, 2014. Beginning with the week that started December 21, 2014; Ms. Winfield has consistently reported weekly wages greater than her weekly benefit amount plus $15.

The Postal Service is not a base-period employer for purposes of the claim year that started for Ms. Winfield on February 9, 2014 and that will end for her on February 7, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

Ms. Winfield’s appeal was filed on December 26, 2014; when the faxed appeal was received by the Appeals Section.

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. Winfield did not have a reasonable opportunity to file an appeal by the December 4, 2014 appeal deadline because she did not receive the decision until December 20, 2014. The decision that Ms. Winfield received was mailed to her on December 15, 2014. Ten days from that mailing day was December 25, 2014, Christmas Day, a legal holiday. The following day was Friday, December 26, 2014. Because the tenth day from the mailing date of the decision fell on a holiday, the deadline was extended to the next working day. Ms. Winfield filed her appeal within a reasonable time of the December 15, 2014 remaining date. There is good cause, attributable to Iowa Workforce Development and/or the United States Postal Service, to treat the appeal as a timely appeal. See 871 IAC 24.35(2). The administrative law has jurisdiction to rule on the merits of the appeal.

Iowa Code § 96.5-1-d provides:

> An individual shall be disqualified for benefits:
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> 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. But the individual shall not be disqualified if the department finds that:
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> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

> Separation because of illness, injury, or pregnancy;
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> a. Non-employment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

> b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work–related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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.

The employer had an obligation to provide the claimant with reasonable accommodations that would allow her to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993).

The evidence in the record indicates that Ms. Winfield was compelled to leave the employment after the employer refused to reasonably accommodate her temporary disability. Ms. Winfield's medical condition was work-related and aggravated by the employment. Ms. Winfield requested a reasonable accommodation. The employer had the ability to provide the accommodation. The quit was for good cause attributable to the employer. The quit does not disqualify the claimant for benefits. The employer's account may be charged for benefits. Because the employer is not a base-period employer for purposes of the claimant's current benefit year, the employer will not be charged for benefits paid to the claimant for the current benefit year. The claimant is eligible for benefits, provided she is otherwise eligible.

Iowa Code § 96.4-3 provides:

> An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:
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> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a, (2) provides:

> Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.
>
> (1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.
>
> a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.
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> (2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Despite the claimant's foot issue, she has been able to work and available for work since she established the additional claim for benefits that was effective November 2, 2014. The claimant made an active and earnest search for new employment until she secured new employment with her old employer. Effective the week that stated December 21, 2014 the claimant was working to such an extent in the new employment that it otherwise removed her from the labor market. The claimant is eligible for benefits for the seven-week period of November 2, 2014 through December 20, 2014. Effective December 21, 2014 the claimant is not eligible for benefits because the new employment makes her not "available for work" within the meaning of the law.

DECISION:

The November 24, 2014, reference 04, decision is reversed. The appeal was timely. The claimant voluntarily quit, effective November 6, 2014, for good cause attributable to the employer based on a work-related medical condition. The separation did not disqualify the claimant for benefits or relieve the employer's account of liability for benefits. The claimant was able and available for work for the seven-week period of November 2, 2014 through December 20, 2014 and is eligible for benefits, provided she meets all other eligibility requirements. Effective December 21, 2014 the claimant was working to such extent as she was no longer available for work within the meaning of the law and, therefore, is no longer eligible for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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