IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LUIS A GARCIA
Claimant

SARA LEE CORPORATION
Employer

APPEAL NO. 17A-UI-01717-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/08/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Luis Garcia filed a late appeal from the January 24, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on a conclusion that Mr. Garcia had voluntarily quit on June 30, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 8, 2017. Mr. Garcia participated and presented additional testimony through Maria Vargas. Pheng Khounin represented the employer. Spanish-English interpreter Jose Amero of CTS Language Link assisted with the hearing. Exhibits 1 and A and Department Exhibit D-1 were received into evidence.

ISSUES:

Whether there is good cause to treat Mr. Garcia's late appeal as a timely appeal.

Whether Mr. Garcia separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Luis Garcia was employed by Sara Lee Corporation in Storm Lake on a full-time basis from July 2015 until June 16, 2016, when he voluntarily quit to move to Puerto Rico to care for his ill mother. On June 1, 2016, Mr. Garcia provided a two-week quit notice to the employer and indicated that June 16, 2016 would be his final day in the employment. At the time Mr. Garcia separated from the employer, the employer continued to have the same work available for him. At the time Mr. Garcia provided his quit notice, he told the employer that he intended to move, but did not mention his mother's health condition. Mr. Garcia decided to relocate to Puerto Rico after his 80 year old mother suffered a debilitating heart attack.

Mr. Garcia arrived in Puerto Rico within a couple weeks after his separation from Sara Lee Corporation. Mr. Garcia's mother suffered additional heart attacks. Mr. Garcia's mother lost use of the left side of her body. Mr. Garcia has since assisted in providing care to his mother.

Mr. Garcia's mother's condition has not improved. Mr. Garcia has not accepted other employment. Mr. Garcia has not returned to Sara Lee Corporation to request to return to the employment.

On January 24, 2017, Iowa Workforce Development mailed a copy of the January 24, 2017, reference 01, decision to Mr. Garcia. The decision disqualified Mr. Garcia for benefits. The decision indicated that an appeal from the decision must be postmarked or received by the Appeals Section by February 3, 2017. Despite some defects in the address information for Mr. Garcia, Mr. Garcia received the decision on or about January 29, 2017. Mr. Garcia's native language is Spanish. Mr. Garcia cannot read in Spanish. Mr. Garcia cannot not speak or read English. Mr. Garcia resides with his wife, Maria Vargas. Ms. Vargas's native language is Spanish. Ms. Vargas is able to read Spanish. Ms. Vargas has a very limited ability to read English.

After Mr. Garcia received the January 24, 2017, reference 01, decision, he and his wife consulted a Puerto Rican equivalent of a Workforce Development Center and enlisted the assistance of a government representative in submitting an appeal to Iowa Workforce Development. Mr. Garcia encountered issues in logging onto the Iowa Workforce Development website to file an appeal and was able to resolve that issue on February 15, 2016. On that day, the government worker assisting Mr. Garcia in filing the appeal successfully submitted an online appeal on behalf of Mr. Garcia. Iowa Workforce Development received the appeal electronically at the time it was submitted.

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).

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 weight of the evidence establishes good cause to treat Mr. Garcia's late appeal as a timely appeal. A number of factors together establish that Mr. Garcia did not have a reasonable opportunity to file an appeal by the February 3, 2017 appeal deadline. These factors include Mr. Garcia's inability to read in English or Spanish, his wife's limited English language skills, and his need to depend on others to read, understand and respond to the decision that was mailed to him. The extenuating factors also include Mr. Garcia's inability to effective access and utilize access to Iowa Workforce Development to file an appeal until February 15, 2017. These factors, taken together, are sufficient to establish good cause to treat the late filed appeal as a timely appeal. Accordingly, the administrative law judge has authority to rule on the merits of the appeal.

Iowa Admin. Code r. 871-24.25(2) provides:

> 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:

(2) The claimant moved to a different locality.

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 evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. The evidence indicates that Mr. Garcia left the employment for the necessary and sole purpose of taking care of his ill mother in Puerto Rico. Mr. Garcia's mother's condition has not improved. Mr. Garcia's mother continues to require ongoing assistance from Mr. Garcia. Mr. Garcia has not returned to the employer in Storm Lake to offer to return to the employment. Mr. Garcia is disqualified for unemployment insurance benefits on the Iowa claim until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Garcia must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

There is good cause to treat the late appeal as a timely appeal. The January 24, 2017, reference 01, decision is affirmed. The claimant voluntarily quit the employment on June 16, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs