IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MYRON L WAYBILL
Claimant

LONGBRANCH INC
Employer

APPEAL NO: 06A-UI-08734-D

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/02/06 R: 03
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Myron L. Waybill (claimant) appealed a representative's July 24, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Longbranch, Inc., Best Western Longbranch Motor Inn (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2006 on the timeliness of the claimant's appeal and an in-person was held on November 15, 2006 on the merits of the appeal. The claimant participated in the hearing and presented testimony from one other witness, Della McMenomy. Doug DeLong appeared on the employer's behalf and presented testimony from one other witness, Daniel Ecklor. During the hearing, Exhibit A-1 and Employer's Exhibits One through Three were 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? 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 July 24, 20063. The claimant did not receive the decision. At the time the decision was issued, the claimant was residing with a girlfriend with whom he was in the process of breaking up. The ex-girlfriend withheld the claimant's mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 3, 2006. The appeal was not filed until August 30, 2006 when he became aware of the disqualification decision after discussing his situation with a local Agency representative.

The claimant started working for the employer on August 24, 2000. He worked full time as a dishwasher in the employer's hotel restaurant. His last day of work was May 29, 2006. He was a no-call, no-show for work after that date until June 8 when he called and spoke to his

supervisor. He told her that he needed to quit for the time being in order to become eligible for public assistance for his Parkinson's disease; he indicated he might be interested in coming back at some time in the future, but that it would have to be part time so that he would not earn so much as to disqualify him from eligibility for public assistance.

In approximately July the claimant did make contact with Mr. Ecklor, the general manager, to see if he could return part time. However, at that time the claimant's position was filled and Mr. Ecklor was not inclined to try to find a position for the claimant due to the manner in which his employment had ended earlier.

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 in pertinent part:

> 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. . . . 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.

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 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 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 v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer.

Iowa Code § 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.

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. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). 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 he 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 him. Iowa Code § 96.6-2. However, leaving due to needing to reduce or eliminate income in order to qualify for public assistance is not a good cause attributable to the employer, and while he had a compelling personal reason, his absence exceeded ten days. 871 IAC 24.25(20), (31). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's July 24, 2006 decision (reference 01) is affirmed. The appeal in this case is deemed timely. The claimant voluntarily left his employment without good cause attributable

to the employer. As of May 30, 2006, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs