

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA A HOYT
Claimant

APPEAL NO: 14A-UI-03167-ST

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

ALS CORNER OIL CO
Employer

**OC: 02/09/14
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(20) – Compelling Personal Reasons
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 10, 2014, reference 01, that held she voluntarily quit without good cause attributable to her employer on December 2, 2013, and benefits are denied. A telephone hearing was held on April 15, 2014. The claimant, and Attorney Jennifer Donovan, participated. Cindy Tiefenthaler, Operations Manager, and Deb Dennhardt, Manager participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on March 10, 2014 with an appeal deadline date of March 20. Claimant had been in a series of women's shelter due to domestic violence. A shelter advocate got claimant's mail. Claimant had participated in department fact finding.

At the urging of an advocate, claimant contacted legal aid about an appeal. The claimant's attorney submitted an appeal postmarked on March 21, 2014 from Des Moines, Iowa.

Claimant began employment as a part-time clerk at a Rippey, Iowa store on January 29, 2010. She last worked on December 2, 2013. The employer did not hear from claimant for scheduled work for three days, and it considered her a voluntary quit based on the no-call/no-show to work. The store manager knew claimant had a domestic violence issue as she had expressed fear with her husband coming to the store. She also asked the store manager on December 9 for help to get out of the house where claimant felt trapped by her husband.

The store manager received claimant's key from a customer about a week or two after she had left. Claimant did contact the employer about further work some week or so after her employment separation. She asked about getting her last paycheck and whether she had to get it in person. She was in Des Moines area (Waukee) and asked about employment there rather than working up north for the employer. Claimant was not willing to consider a return to employment at the Rippey store.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant filed a timely appeal. The appeal was only one day late. Claimant's fear of domestic violence that took her to different women shelters is good cause for the delay.

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.

871 IAC 24.25(20) 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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

The administrative law judge further concludes claimant voluntarily quit without good cause attributable to the employer effective December 2, 2013 for personal reasons.

While it is apparent claimant had good personal reasons for quitting due to domestic spousal violence, it is not attributable to the employer. She did not report back for work and had a customer turn in her key. She ended up in a Des Moines area women's shelter and when she contacted the employer she had no intention to return to the Rippey store where she had worked though she asked about local employment.

DECISION:

The department decision dated March 10, 2014, reference 01, is affirmed. The claimant affected a timely appeal due to good cause delay. Claimant voluntarily quit without good cause attributable to the employer on December 2, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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