IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KRISTI K KNOFF
17253 OLIVE AVE
CASTANA IA 51010

MAPLE VALLEY COMMUNITY
SCHOOL DISTRICT
ATTN SECRETARY
MAPLETON IA 51034

Appeal Number: 04A-UI-12720-RT
OC: 08-15-04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.6-2 – Initial Determination (Timeliness of Appeal)
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Maple Valley Community School District, filed an appeal from an unemployment insurance decision dated September 10, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Kristi K. Knoff. After due notice was issued, a telephone hearing was held on December 20, 2004 with the claimant participating. Steve Oberg, Superintendent of Schools, and Shona Fitchner, Business Manager, participated in the hearing for the employer. Department Exhibit 1 and Employer's Exhibits 1 and 2 were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit 1 and Employer's Exhibits 1 and 2, the administrative law judge finds: An unemployment insurance decision dated September 10, 2004, reference 01, determined that the claimant was eligible to receive unemployment insurance benefits because records indicate that the claimant quit work on June 30, 2004 because of a change in the contract under which she was hired and her leaving was caused by her employer. That decision was sent to the parties on the same day. That decision indicated that an appeal, if any, must be postmarked or otherwise received by the Appeals Section by September 20, 2004. However, as shown by Department Exhibit 1, the employer's appeal was faxed to the Appeals Section and received by it on November 29, 2004, over two months late. The reason the appeal was late was that the then school board manager had contracted cancer and was on an extended leave and the employer was not able to give attention to any matters other than opening bills and receipts. The employer never received the decision dated September 10, 2004. The employer received the quarterly statement of charges for the third quarter of 2004 which was mailed to the employer on November 9, 2004 as shown at Employer's Exhibit 1. The employer faxed an inquiry on November 19, 2004 also as shown at Employer's Exhibit 1. The employer then filed the appeal of the decision dated September 10, 2004, on November 29, 2004.

Because the administrative law judge hereinafter concludes that although the employer's appeal was late, the employer has demonstrated good cause for the delay in the filing of its appeal and the appeal should be accepted and the administrative law judge has jurisdiction, the administrative law judge further finds: The claimant was employed by the employer as a part-time cook/custodian from August 18, 2000 until she voluntarily quit on June 30, 2004. Throughout her employment, during the school year, the claimant worked as a cook from 7:45 a.m. to 1:00 p.m. and then as a custodian from 3:00 p.m. to 5:00 p.m. working at least seven hours per day. In the summer, the claimant worked only as a custodian, still working seven hours per day but not through the entire summer.

The employer built a new high school which included a kitchen and, therefore, had two kitchens to prepare meals for its students. The employer determined to consolidate the two kitchens into one to save money and the employer already had sufficient cooks so that the claimant was no longer able to be a cook. Therefore, the employer offered the claimant a contract as shown at Employer's Exhibit 2 only as a custodian working three hours from 1:00 p.m. to 4:00 p.m. with summer hours varying. Because under this contract the claimant's hours would be reduced from seven hours per week to three hours per week, the claimant refused the contract noting on the contract as shown at Employer's Exhibit 2, "I am not accepting this position." When the claimant learned of the change in her contract, she expressed concerns to the employer's witness, Steve Oberg, Superintendent of Schools. She indicated to him that she could not continue working for the employer if she only worked three hours. Mr. Oberg indicated to the claimant that no other arrangement was possible. The claimant then quit because of the change in her hours.

Pursuant to her claim for unemployment insurance benefits filed effective August 15, 2004, the claimant has received unemployment insurance benefits in the amount of $2,451.00 as follows: $129.00 per week for 19 weeks from benefit week ending August 21, 2004 to benefit week ending December 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely appeal of the decision dated September 10, 2004, reference 01, or, if not, whether the employer demonstrated good cause for such failure. The administrative law judge concludes that the employer's appeal was not timely but the employer has demonstrated good cause for its delay and, therefore, such appeal should be accepted. The administrative law judge further concludes that he has jurisdiction to reach the remaining issues.

2. Whether the claimant's separation from employment was a disqualifying event. It was not.

3. Whether the claimant is overpaid unemployment insurance benefits. She is not.

Iowa Code Section 96.6-2 provides in pertinent part:

> 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 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).

(2) The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the employer has the burden to prove that its appeal was timely or that it had good cause for the delay in the filing of its appeal. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that, although its appeal was not timely, it had good cause for the delay in the filing of its appeal. The employer's appeal on its face at

Department Exhibit 1 and as set out in the findings of fact, indicates that the employer's appeal was over two months late. The employer's witnesses credibly testified that the appeal was late because the employer's then Business Manager for the School Board had cancer and was on an extended leave and some items were not being dealt with. Further, the employer's witnesses credibly testified that the employer never received the decision from which it now seeks to appeal. The employer received the quarterly statement of charges for the third quarter of 2004 as shown at Employer's Exhibit 1 which was mailed to the employer on November 9, 2004. The employer timely filed an inquiry about the quarterly statement of charges on November 19, 2004 as shown in the second page of Employer's Exhibit 2. The employer then filed this appeal on November 29, 2004. Iowa Code section 96.7(6) provides that within 40 days after the close of each calendar quarter, the Department shall notify each employer of the amount of benefits charged to the employer's account. An employer who has not been notified as provided in section 96.6(2) of the allowance of benefits to an individual, may within 30 days after the date of mailing of the notification appeal for a hearing to determine the eligibility of the individual to receive benefits. Iowa Code section 96.6(2) really applies to the "protest" filed by the employer but the administrative law judge believes that here it also is applicable to a decision giving the employer notice of the eligibility of benefits. Accordingly, the administrative law judge concludes that the employer timely appealed the quarterly statement of charges since the inquiry was made on November 19, 2004, ten days after the quarterly statement of charges had been mailed and the appeal was filed on November 29, 2004, 20 days after the quarterly statement of charges has been appealed. The administrative law judge concludes that the employer has demonstrated good cause for a delay in the filing of its appeal. Accordingly, the administrative law judge concludes that, although the employer's appeal was not timely, the employer has demonstrated good cause for not complying with the jurisdictional time limit and, therefore, the administrative law judge concludes that the employer's appeal should be accepted and that he has jurisdiction to reach the remaining issues.

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 24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The parties agree, and the administrative law judge concludes, that the claimant voluntarily left her employment on June 30, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge

concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The evidence establishes that the claimant throughout her employment with the employer had been employed during the school year as a cook/custodian working at least seven hours per day. This was changed some time prior to June 30, 2004 when the employer offered the claimant a contract only as a custodian and only for three hours per day from 1:00 p.m. to 4:00 p.m. It is true that the new contract as shown at Employer's Exhibit 2 containing a reduction of hours is a new contract. However, even the new contract indicates that the claimant is employed on an at will basis for an indefinite period of time. Accordingly, even though the claimant's previous contract may have, in fact, expired, the claimant was, during that time, also employed for an indefinite period of time. Therefore, the administrative law judge concludes that the employer's new contract was in effect a willful breach of the claimant's contract of hire which breach was substantial involving changes in working hours. The evidence shows that at all material times prior to June 30, 2004, the claimant was working at least seven hours a day and this was going to be reduced to three hours per day. This is a substantial change. The employer changed the hours simply because it had constructed a new high school which had a kitchen causing the employer to have two kitchens and that, therefore, the employer decided to consolidate its kitchens and the employer already had enough cooks without keeping the claimant. Accordingly, the administrative law judge concludes that the employer breached its contract of hire with the claimant which breach was substantial and, therefore, justified the claimant's quit. The claimant expressed concerns to the employer about the change in her working hours indicating that she could not continue to work under those hours but was told that it could not be changed. Therefore, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

The employer raised some issues about whether the claimant was entitled to unemployment insurance benefits during the summer. The administrative law judge notes that although the claimant voluntarily quit effective June 30, 2004, she did not file for unemployment insurance benefits until an effective date of August 15, 2004. If the employer believes that the claimant was not entitled to benefits during whatever portion of the summer remained, this would be an able and available issue under Iowa Code section 96.4-3 and/or a refusal to accept suitable work issue under Iowa Code section 96.5-3-a and since neither of those issues was on the notice, the administrative law judge cannot now decide those issues. If the employer believes those are still issues the employer needs to address this matter by filing another protest of the claimant's benefits with Iowa Workforce Development specifying these issues.

Iowa Code Section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

> If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of $2,451.00 since separating from the employer herein on or about June 30, 2004 and filing for such benefits effective August 15, 2004. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of September 10, 2004, reference 01, is affirmed. The claimant, Kristi K. Knoff, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she left her employment voluntarily with good cause attributable to the employer. As a result of this decision, the claimant has not been overpaid any unemployment insurance benefits arising out of her separation from the employer herein. Although the employer's appeal was not timely, it has demonstrated good cause for the delay in the filing of its appeal and the appeal should, therefore, be accepted.

tjc/b