

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A HUTCHINSON
Claimant

APPEAL NO: 14A-UI-10181-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH IOWA WOOD PRODUCTS INC
Employer

OC: 07/20/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

James A. Hutchinson (claimant) appealed a representative's August 13, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with North Iowa Wood Products, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 21, 2014. The claimant participated in the hearing and presented testimony from one other witness, Cindy Bartlett. Larry Bailey appeared on the employer's behalf. During the hearing, Exhibit A-1 was 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 or are there legal grounds under which it should be treated as timely? Did the claimant voluntarily quit for a good cause attributable to the employer?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on August 13, 2014. The claimant did not receive the decision at that time. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section within ten days of issuance, by August 23, 2014. The appeal was not filed until it was postmarked on September 30, 2014, which is after the date noticed on the disqualification decision.

When the claimant did not receive a decision or benefits, he and his sister, Bartlett, contacted his local Agency office about the end of August. He was told that the decision had been issued and had gone against him. The office arranged for another copy to be mailed to the claimant, which he did receive about the first week of September. As he effectively could not read or write, he waited until he next saw Bartlett to have her assist him in making an appeal. This was

accomplished by at least September 23. However, the claimant still did not immediately mail the appeal; it was not postmarked until September 30.

The claimant started working for the employer in about October 1998. He worked part time as a manufacturing helper. His last day of work was July 14, 2014. He got angry with another employee on that day and did not return to work after leaving for lunch. The other employee had told the claimant to "quit goofing off," saying that he was "not putting up with your b.s. all day," and "why don't you just go home." The claimant had generally had some issues with how other employees had treated him, but he had not voiced these concerns to the president, Bailey.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. Rule 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The appellant did have a reasonable opportunity to file a timely appeal, at least after physically receiving the decision in early September. At that point, he already knew that the decision had gone against him and that he would need to appeal, yet he did not seek out any other assistance from someone else who could read and write to create an appeal, but waited until at least September 23 to get together with Bartlett, and then he again waited as much as another week to mail the appeal.

The administrative law judge concludes that failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the

administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

However, in the alternative, even if the appeal were to be deemed timely, the administrative law judge would affirm the representative's decision on the merits. 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. Rule 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 and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). 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. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. Rule 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. Rule 871 IAC 24.25(21), (6). Quitting because a reprimand has been given is not good cause. Rule 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's August 13, 2014 decision (reference 01) is affirmed. The appeal was not timely. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 14, 2014, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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