IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CYNTHIA J EVERETT
Claimant

WILLIAM PENN UNIVERSITY
Employer

APPEAL NO: 10A-UI-07833-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/28/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Cynthia J. Everett (claimant) appealed a representative's April 13, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from William Penn University (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 20, 2010. The claimant participated in the hearing. Louise Blaine appeared on the employer's behalf. During the hearing, Exhibit A-1 and Employer's Exhibits One and Two 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 or are there legal grounds under which it can be treated as timely? Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a fact-finding interview conducted on March 23, 2010, the representative's decision was mailed to the claimant's last-known address of record on April 13, 2010. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 23, 2010, a Friday. The appeal was not filed until it was hand-delivered to the claimant's local Agency office on June 1, 2010, which is after the date noticed on the disqualification decision. The reason the appeal was not filed until that time was that the claimant was not made aware of the decision until she visited her local Agency office that day.

The claimant started working for the employer on January 2, 2007. She worked full time as an administrative assistant in a financial aid office. Her last day of work was August 25, 2009.

Starting as of that date the claimant went on a medical leave of absence for a number of issues, including a heart issue and a subsequent finger injury.

On February 11 and February 12 the employer received two doctor's notes from two of the claimant's doctors, one releasing her as of February 12 and the other releasing her as of February 28. As a result, on February 16 the employer sent the claimant an email indicating that it had received her doctors' releases indicating that she could return without restrictions after February 28. The employer advised her that her medical leave was therefore being extended through February 28, and that "we will expect you to return to work at your regular starting time on March 1, 2010." (Employer's Exhibit One.)

The claimant did receive the email, and responded to another aspect of the email on February 17. She did not make any reference to there being any other doctor's restriction still existing which would prevent her from returning to work on March 1. The claimant did not report for work or contact the employer on March 1, nor on March 2. On March 2 the employer sent the claimant a letter both by mail and email stating that since the claimant had been a no-call/no-show for work when she was scheduled to return from her leave, her employment was considered to be ended by job abandonment. The letter, sent by Ms. Blaine, the human resources director, further stated, "If you have any questions regarding this, you may contact me." The claimant did not respond to Ms. Blaine with any information as to why she had not returned to work by March 1, but only subsequently followed up with her on COBRA insurance questions. At no time after February 16 did the claimant inform or advise the employer that there was still one doctor who did not want her to return to work until she was seen again, which did not occur until April 2010.

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 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 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, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. The employer in good faith relied on the doctors' excuses that had been provided to it regarding the claimant's release for work as of March 1. The claimant was on notice of the employer's understanding that she had been released and its expectation that that she would be able to return to work on March 1, but did not take the commonsense action of responding to the employer to point out that she disagreed with the employer's understanding and that she would not be back to work on March 1. Further, upon receiving the employer's March 2 letter further explaining that the employer had expected her back on March 1 and her failure to return was being considered to be job abandonment, the claimant again did not respond to point out there had been a misunderstanding, that she was still under one doctor's work restriction. The claimant had several last clear chances to avoid the misconstruction or clarify the situation, but failed to do so. Rather, her response to the other issue raised in the February 16 message but not addressing or mentioning the medical release and return to work expectation only affirmed the employer's interpretation that the claimant had in fact been released and would be returning as of March 1.

The intent to quit can be inferred in certain circumstances. For example, as well as failing to return at the set end of a leave of absence, failing to report and perform duties as scheduled and assigned is considered to be a voluntary quit. 871 IAC 24.22(2)j; 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she 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 her. Iowa Code § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's April 13, 2010 decision (reference 01) is affirmed. The appeal is treated as timely. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 1, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css