

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KECIA M GARRETT
Claimant

APPEAL NO. 15A-UI-07130-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GENERAL DYNAMICS INFORMATION
TECH**
Employer

**OC: 05/03/15
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the May 18, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 28, 2015. The claimant did participate. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether the appeal is timely?

Whether claimant was discharged for misconduct?

Whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: As claimant was the only participant in the hearing, all findings of fact are gleaned from claimant's testimony. A decision was mailed to the claimant's last-known address of record on May 18, 2015. Claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 28, 2015. The appeal was not filed until June 22, 2015, which is after the date noticed on the disqualification decision.

Claimant stated that soon after the first fact-finding interview was conducted, claimant received a document telling her that there was another fact-finding interview scheduled. Claimant did not file an appeal as she was scheduled to have another interview prior to the date the appeal needed to be filed. Claimant was successful in the second interview, being granted benefits. As she tried to pursue these benefits, she was told that she could not receive them as she had been denied. She was then told to appeal the first decision.

Claimant's last day at work was December 28, 2014. Claimant was off work on maternity leave until February 17, 2015. Claimant kept in touch with her employer through her maternity leave. As the time approached to return to work, claimant could not find daycare to take care of her small child. Claimant did not return to work. Claimant kept in touch with employer, but did not return to work for over a month after she was supposed to return. Employer terminated claimant on March 30, 2015 as claimant still had not located daycare. At or around the time of the termination, claimant found daycare. She did not go into work to talk with human resources about her change of circumstances, but stated that she tried to call in, and the calls were not returned.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides:

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 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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.

Iowa Admin. Code r. 871-24.25(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 § 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 § 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 ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 any Agency error in sending claimant another notice of hearing. As such, the court may evaluate the merits of the claim.

Claimant was on maternity leave until February 17, 2015. After that date, claimant had compelling personal reasons not to return to work. After February 27, 2015 claimant needed to return to work. Claimant could not return at that time as she had not secured child care. Claimant's action is determined to be the equivalent of a voluntary quit from her job. The quit was brought about by compelling personal reasons, being unable to obtain child care for her small child. This reason does not allow claimant to receive unemployment benefits under the law. The same would be true if this case were looked at as a termination for absenteeism. Claimant did not show for work for an extended period because of personal reasons. Claimant is not eligible for the receipt of unemployment benefits.

DECISION:

The May 18, 2015, reference 01, decision is affirmed. The appeal in this case was deemed timely, but the decision of the representative remains in effect as claimant voluntarily quit her job without good cause attributable to employer. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs