IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JEREMY WHITE
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL NO: 09A-UI-17810-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/19/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jeremy White (claimant) appealed a representative's September 15, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from CRST Van Expedited, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 7, 2010. This appeal was consolidated for hearing with one related appeal, 09A-UI-17811-DT. The claimant participated in the hearing. Sandy Matt 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 can be treated as timely? Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on September 15, 2009. The claimant testified that he did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 25, 2009. The appeal was not filed until it was faxed on November 27, 2009, in response to a resulting overpayment decision issued on November 17, 2009 (reference 02); November 27 is after the date for appeal noticed on the disqualification decision.

The claimant started working for the employer on August 14, 2008. He worked full time as an over-the-road truck driver, working about four weeks on and then off for about one week. His last day of work was November 7, 2008.

The claimant began his week of home time on November 7. About a week later, but a day before he thought he and his partner would be heading back out, he caught a bus from his home to take him to the employer's Carlisle, Pennsylvania yard to meet his partner and the

truck. While he was en route, he received a call from his partner inquiring where he was. He explained that he was en route. Before the claimant arrived, the partner found a new partner and left on a load. The employer did not have another partner available to give to the claimant. The employer's program makes it the driver's responsibility to find a partner. While the employer did give the claimant several lists of potential drivers to partner with, the claimant was not successful in finding anyone on those lists to partner with. After the claimant went through the lists, his communication with the employer lapsed. When the claimant had not found a partner and returned to work after 30 days, the employer considered the claimant to have abandoned his employment.

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).

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 by failing to find a replacement partner and not returning to work with the employer. 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. The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's September 15, 2009 decision (reference 01) is affirmed. The appeal is treated as timely. The claimant voluntarily left his employment without good cause attributable to the employer. 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs