IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KELLY J GOOD
Claimant

BARCLAY & ASSOCIATES PC
Employer

APPEAL NO. 11A-UI-02720-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/02/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 14, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 29, 2011. Claimant participated. Employer participated by Gregory Barclay, M.D., president and chief executive officer, and Dori Gass, office manager. The record consists of the testimony of Kelly Good; the testimony of Gregory Barclay; and the testimony of Dori Gass.

ISSUES:

Whether the claimant filed a timely appeal; and
Whether the claimant voluntarily quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On February 14, 2011, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by February 24, 2011, or received by the appeal section on that date. The claimant's appeal was filed on March 7, 2011. The claimant did not receive a copy of the representative's decision in the mail. She found out about the decision when she called her local workforce office. She filed her appeal within a few days.

The employer provides mental health care. The claimant was hired in May 2010 as a part-time office assistant. The claimant's last day of work was either August 20, 2010, or August 21, 2010. The claimant voluntarily quit her job. She wrote a note to her employer stating that she was quitting and left without informing anyone. She called Dori Gass, a fellow employee, and told her that she was quitting.

On the morning that the claimant quit her job, the claimant had a discussion with Dr. Barclay about the charts and forms that needed to be prepared for the patients who were coming in that day. Dr. Barclay had discovered that these documents had not been prepared and spoke to the claimant about this. On the previous Monday, the claimant and Dori Gass had received an email from Dr. Barclay about problems with patient files and charts and emphasized how important it was that these files and charts be properly prepared. Attention to detail was critical in his opinion. The claimant perceived Dr. Barclay's comments as critical of her performance and that she was incompetent.

The claimant did not like the atmosphere of the office. There was a large heavy door that tended to slam shut despite efforts to prevent that from happening. The claimant believed that when Dr. Barclay closed the door he was slamming it intentionally. He also tossed his charts into a box under the receptionist desk. The claimant perceived this as Dr. Barclay "throwing files." The claimant and Ms. Gass also discovered that Dr. Barclay had placed an ad in the newspaper advertising for employment. They were both concerned that they were going to be replaced. Ms. Gass asked Dr. Barclay about the ad and he explained that he was looking to hire a business manager. Neither the claimant nor Ms. Gass were going to be replaced. Ms. Gass told the claimant about Dr. Barclay's explanation.

Work was available for the claimant at the time she quit her job.

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 an appeal postmarked as timely. She did not receive the representative's decision in the mail. She filed her appeal after she was informed by the local workforce office that she had been denied benefits. The administrative law judge will treat the appeal as having been timely filed.

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.

871 IAC 24.25(21) 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:
>
> (21) The claimant left because of dissatisfaction with the work environment.

871 IAC 24.25(28) 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:
>
> (28) The claimant left after being reprimanded.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in this case is uncontroverted that it was the claimant who initiated the separation of employment. The claimant intended to sever the employment relationship and did so by leaving a note that she was quitting and then exiting the workplace. The issue, therefore, is whether the claimant's quitting was for good cause attributable to the employer.

The employer is health care provider. The claimant's job essentially involved maintenance of the employer's records and attention to detail was critical in performance of the claimant's job. Charts and forms needed to be prepared for use during a patient appointment. Documentation was essential to chronicle patient history and treatment and for billing purposes. The employer had an obligation to the patients being seen in the clinic to maintain accurate records. The employer can hardly be criticized for monitoring the claimant's job performance and pointing out deficiencies when they occurred.

It is not always easy to work in an environment where attention to detail is required. The claimant clearly did not like the way she was treated by Dr. Barclay but the evidence does not show that he was overly demanding and critical or that he treated her in a less than professional manner. The claimant complained about a slamming door and files being thrown. Dr. Barclay and Ms. Gass both testified that there was a big heavy door in the office that did slam on occasion. Even the claimant said this happened only once a week or once every two weeks. Dr. Barclay did toss his files in a box near the claimant but again this is not throwing files at the claimant or even in an angry manner. The claimant appears to have been overly sensitive to conduct that was seemingly innocuous and certainly not directed at her.

The ad in the paper advertising for help was also not directed against the claimant. The employer was advertising for a business manager. Maybe Dr. Barclay could have told the claimant and Ms. Gass about the ad before he ran it, but Ms. Gass was assured that her job and the claimant's job were not in jeopardy. Ms. Gass told the claimant that the ad was for a different position altogether. The claimant still felt somehow that this was a criticism of her job performance.

The administrative law judge concludes that there is insufficient evidence to show a hostile or detrimental workplace. The claimant decided that she simply did not want to work for Dr. Barclay. She found him to be intimidating and she did not like his criticisms of her performance. The claimant may have quit for compelling personal reasons, but she did not quit for good cause attributable to the employer. Benefits are denied.

DECISION:
The decision of the representative dated February 14, 2011, reference 01, is affirmed. 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.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs