IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GAIL J WOOD
Claimant

QCSA DIRECT
Employer

APPEAL NO: 12A-UI-04555-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/11/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Gail J. Wood (claimant) appealed a representative's April 6, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with QCSA Direct (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2012. The claimant participated in the hearing. Selena Castle appeared on the employer's behalf and presented testimony from two witnesses, Jodie Schwarz and Lisa Liberio. 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 April 6, 2012. The claimant received the decision, but not until April 22. She had been out of town/out of state from April 1 through April 21. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 16, 2012. The appeal was not filed until it was faxed to and received by the Appeals Section on April 23, 2012, which is after the date noticed on the disqualification decision.

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on April 25, 2011. She worked full-time as an insurance approval specialist in the employer's auto auction business. Her last day of work was February 22, 2012. Her base schedule was from 8:00 a.m. to 5:00 p.m., Monday through Friday, although since beginning her work with the employer through the temporary employment firm she usually worked between 7 and 12 hours of overtime. While the claimant previously had worked some of her overtime on Saturdays, for the last several months she had not had to work on Saturdays, but would work some overtime by coming in at 7:00 a.m. most days of the week and working later than 5:00 p.m. about three days per week. While virtually all of the employees complained about the overtime, the claimant had not advised the employer of any specific problem that working the regular overtime was causing her. On those occasions where the claimant did have some important reason she was not able to stay over and work overtime, her supervisor, Schwarz, had always agreed that she could leave.

The claimant interacted regularly with a coworker, Liberio, another insurance approval specialist. There had been at least one prior occasion where Liberio had complained to Schwarz that the claimant was "bossing her around" and telling her to do work other than the priority insurance release work; Schwarz had informally reminded the claimant that the priorities were the insurance releases and that she was not Liberio's supervisor. On February 21 there was a verbal confrontation between the claimant and Liberio in which the claimant was directing Liberio to do filing work rather than the insurance release work; the discussion became somewhat heated, with Liberio telling the claimant she was her coworker, not her supervisor, and the claimant telling Liberio that she was a "spoiled brat." Liberio then again complained to Schwarz. On February 22 Schwarz gave the claimant a written warning because of the confrontation, indicating that the claimant's attitude was inappropriate, that she should apologize to Liberio, that she was not Liberio's supervisor, and that the insurance releases were the priority over filing.

On February 23, rather than reporting to work, the claimant came to the premises and turned in a two-week notice of resignation to Schwarz. The claimant's note indicated that she was resigning because the "recently unsettling situation" at work made it "uncomfortable" for her to continue working. The employer reviewed the claimant's resignation notice; it then determined that it would pay the claimant for the two-week notice period, but would not require her to work through the period. As a result, February 22 became her last day of work.

At the hearing, the claimant asserted that the primary reason she quit was not because of the difficulty working with Liberio or the reprimand she had received on February 22. Rather, she asserted that the primary reason she had quit was because of the ongoing overtime requirements. While the employer gave weekly communications generally indicating the relative work load and need for overtime for the upcoming week, the claimant felt that the lack of knowing on a day-to-day basis what time she would be able leave work made it difficult for her to plan her family and personal life.

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 the appellant's 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 her employment, she 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 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. Where a claimant gives several different reasons for leaving employment, all stated reasons that might have combined to give the claimant good cause to quit must be considered in determining whether any of those reasons alone or in combination constituted good cause attributable to the employer. *Taylor v. IDJS*, 362 N.W.2d 534 (Iowa 1985). Here, the claimant did not give the employer any reason for leaving other than the "unsettling situation" regarding Liberio. Regardless, the administrative law judge will also consider the claimant's post-resignation stated reason regarding the overtime demands.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker or a supervisor is not good cause. 871 IAC 24.25, (6). (21), (22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). Quitting because of the constant need for overtime is not good cause, particularly where the claimant was aware of the overtime demands when she was offered and accepted the employment. 871 IAC 24.25(13), (18). 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). Rather, her complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The appeal in this case is treated as timely. The representative's April 6, 2012 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 8, 2012, 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw