IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

EDDIE N CORDERO RUIZ Claimant **SIG INTERNATIONAL IOWA INC** Employer	**APPEAL 21A-UI-24415-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/08/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Eddie N. Cordero Ruiz, filed an appeal from the December 24, 2020 (reference 01) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 30, 2021. The claimant participated personally and through a Spanish interpreter with CTS Language Link. The employer, SIG International Iowa Inc., did not participate. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision. Department Exhibit D-1 was admitted.

ISSUES:

Is the appeal timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a pork processing plant. Claimant worked full-time as a sanitizer beginning in June 2019. His hours were reduced in spring 2020 due to the COVID-19 pandemic. He last performed work on July 8, 2020 when he quit the employment. Continuing work was available.

Prior to quitting, employer had implemented safety procedures in response to the COVID-19 pandemic, which included the use of face masks, and doing temperature checks upon entry to the employer. Claimant reported his co-workers would not comply with the procedures, by either not wearing masks or coming to work late, where no one would take their temperature. Claimant repeatedly confronted co-workers about his concerns for safety. He reported they laughed at him or suggested COVID-19 was not real. Claimant went to his immediate supervisor for help in enforcing the policies, but no changes occurred.

Claimant stated the deciding factor that made him quit was the early birth of his daughter. Claimant was concerned for her health and safety because safety protocol was not being followed at the workplace, even though claimant informed his supervisor that others were not wearing masks or temperature checks. Claimant stayed working for one week after his daughter was born before deciding that based upon her increased health risk and his concerns with safety, he quit.

An initial decision (reference 01) denying benefits was mailed to claimant's address of record on December 24, 2020. The decision contained a warning that an appeal was due by January 3, 2021. Claimant received the initial decision in January. The appeal was filed on November 1, 2021 (Department Exhibit D-1). Claimant did not receive the letter until January, as he resides in Puerto Rico. Claimant has limited English proficiency and needed help understanding and translating the decision. Claimant made attempts to contact IWD at the time he received the letter, and waited on hold for hours upon hours with no answer. Claimant tried to email IWD for guidance but the emails would not go through. Claimant tried taking the letter to his local unemployment office in Puerto Rico, for guidance. Claimant also took the letter to an accountant for assistance in translating. Claimant's file was appealed on November 1, 2021 after he received assistance in understanding the decision and what to do (See Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is the timelines of claimant's appeal.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant has limited English proficiency. Claimant in this case made multiple, good faith efforts to contact IWD from his residence in Puerto Rico, to obtain assistance and translation of the initial decision. Claimant's delay in filing his appeal was in part due to Agency unavailability, as claimant repeatedly made contact via phone and email. See Iowa Admin. Code r. 871-24.35(2). Based upon the above reasons, the administrative law judge concludes the claimant's appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit with good cause attributable to the employer.

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.

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

Claimant contends that he voluntarily quit due to intolerable working conditions, or unsafe working conditions, because his co-workers repeatedly refused to follow safety protocol, including mask wearing and temperature taking, to reduce the risk of COVID-19 transmission. As such, if claimant establishes that he left due to intolerable or detrimental or unsafe working conditions, benefits would be allowed.

Iowa Admin. Code r. 871-24.26(4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (4) The claimant left due to intolerable or detrimental working conditions.

Iowa Admin. Code r. 871-24.26(2) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (2) The claimant left due to unsafe working conditions.

The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993). In this case, a reasonable person would have believed that claimant's working conditions were unsafe, intolerable and detrimental to the claimant due to the lack of enforcement of safety procedures to properly protect claimant (and his family) from infection. Based upon the evidence presented, the administrative law judge is persuaded a reasonable person, who took steps to preserve employment, as claimant did, would quit under the circumstances. As such, the claimant's

voluntary quitting was for a good-cause reason attributable to the employer according to Iowa law. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 24, 2020 (reference 01) initial decision is reversed. The appeal is accepted as timely. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge
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January 26, 2022
Decision Dated and Mailed

jlb/mh