

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN L PETERSON
Claimant

APPEAL NO. 17A-UI-11927-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DARYL BAKER
Employer

OC: 10/15/17
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

John Peterson filed an appeal from the November 2, 2017, reference 01, decision that disqualified him for benefits and that stated the employer's account would not be charged for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Peterson voluntarily quit on September 28, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 12, 2017. Mr. Peterson participated. Daryl Baker represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUES:

Whether there is good cause to treat the late appeal as a timely appeal.

Whether Mr. Peterson's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 2, 2017, Iowa Workforce Development mailed a copy of the November 2, 2017, reference 01, decision to claimant John Peterson at his last-known address of record. That address of record included an erroneous house number of 205, rather than 2502. The erroneous house number was entered into the Workforce Development records at the time a Workforce Advisor at the Burlington IowaWorks Center assisted Mr. Peterson in establishing his claim for benefits. The November 2, 2017, reference 01, decision stated that an appeal from the decision must be postmarked by November 12, 2017 or be received by the Appeals Bureau by that date. Mr. Peterson did not receive the decision that was addressed to the erroneous house number. On November 20, 2017, Mr. Peterson went to the Burlington IowaWorks Center to inquire about the status of his claim. At that time, Mr. Peterson learned of the decision that had disqualified him for unemployment insurance benefits. On that same day, Mr. Peterson completed an online appeal and the Appeals Bureau received the online appeal.

Daryl Baker owns and operates a construction contracting company that performs concrete work. Mr. Baker hired Mr. Peterson to work as a full-time concrete laborer. Mr. Peterson worked for Mr. Baker's company for about a month and last performed work for the company on or about October 16, 2017. During the brief employment, Mr. Peterson was absent from work in connection with legal matters pertaining to his previous employment with another employer and in connection with custody issues pertaining to his teenage son. Mr. Baker allowed Mr. Peterson to take the time he needed to attend to these matters. After Mr. Peterson worked his last day in October 2017, he ceased appearing for work. Mr. Baker continued to have work available for Mr. Peterson. On October 23, 2017, Mr. Peterson sent Mr. Baker a text message. In the message, Mr. Peterson advised that the issues pertaining to his minor son's living arrangements and issues pertaining to his prior employment were ongoing and that he would not be returning to the employment. Mr. Peterson added in his message that he had loved working for Mr. Baker's company and that he might seek to return to the employment during the 2018 construction season. While Mr. Peterson now asserts that ongoing issues with his back factored in his decision to leave the employment, he did not share this information with the employer. In addition, Mr. Peterson presented no medical documentation to the employer or to Iowa Workforce Development to support his assertion that he needed to leave the employment for health reasons.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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, subsections 10 and 11, 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.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The evidence in the record establishes 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).

Mr. Peterson did not have a reasonable opportunity to file an appeal by the November 12, 2017 deadline because he had not received a decision by that date. Indeed, Mr. Peterson never received a copy of the November 2, 2017, reference 01, decision. He learned of the decision on November 20, 2017 and filed an appeal that same day. The address error arose in the context an Iowa Workforce Development Workforce Advisor assisting Mr. Peterson in establishing his claim for benefits. The administrative law judge cannot rule out the agency representative as a potential contributor to entry of the erroneous street number into the agency's records. There is good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code 871-24.35(2) (regarding good cause to treat a late appeal timely due to error on the part of Iowa Workforce Development and/or the United States Postal Service). The administrative law judge further has jurisdiction to consider the appeal and enter a decision based on the merits.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence,

and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Code section 96.5(1)f provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

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.

Mr. Peterson has presented insufficient evidence to prove, by a preponderance of the evidence, that he left the employment due to a medical condition that necessitated his departure from the employment and that he left upon the advice of a licensed and practicing physician. Mr. Peterson made no mention to the employer that he needed to leave for medical reasons. Mr. Peterson presented no medical document to the employer or to Iowa Workforce Development to support his assertion that he had to leave due to a medical condition.

The evidence establishes that Mr. Peterson left the employment due to compelling personal reasons pertaining to his teenage son's living arrangements and due to ongoing legal matters pertaining to a prior employment. The separation from the employment has lasted well beyond 10 working days. Mr. Peterson's separation from the employment due to his compelling personal circumstances was without good cause attributable to the employer. Accordingly, Mr. Peterson is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Peterson must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 2, 2017, reference 01, decision is affirmed. The claimant's appeal was timely. The claimant voluntarily quit, effective October 23, 2017 for compelling personal reasons, but without good cause attributable to the employer. The separation exceeded 10 working days. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs