IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JIMMY L WILLIAMS
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL NO: 11A-UI-13726-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/18/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jimmy L. Williams (claimant) appealed a representative's October 4, 2011 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 November 14, 2011. The claimant participated in the hearing. Sandy Matt appeared on the employer's behalf and presented testimony from one witness, Patrick Ralph. 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?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on October 4, 2011. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 14, 2011. The appeal was not treated as filed until a fax was sent on October 18, 2011, which is after the date noticed on the disqualification decision. However, the claimant demonstrated that he had previously successfully faxed an appeal to the proper fax number for the Appeals Section on October 7.

The claimant started working for the employer on July 2, 2010. He worked full time as an over-the-road truck driver. His last day of work was August 20, 2011.

After making a delivery in Waco, Texas on August 20, the claimant drove back to his home in Dallas, Texas to go to a doctor's appointment scheduled for August 24 and to wait to find a new co-driver, as he and his former partner had agreed to part ways. The employer approved the claimant being on home time through August 27.

The claimant had not been having any luck finding a new co-driver, and on the afternoon of August 30 the employer sent the claimant a message that there was a single driver run available to take a trailer from the Dallas area drop yard to a drop yard in West Memphis, Arkansas, about a nine-hour drive. The claimant acknowledged the message, and in a phone conversation confirmed to the fleet manager, Ralph, that he would take the trip. Ralph explained to the claimant that if a co-driver from the Dallas area was found while the claimant was on the run to Arkansas that he would be routed back through the Dallas area to pick up the new co-driver. The trailer was to be picked up before 11:59 p.m. on August 30 to be delivered to the Arkansas drop yard by mid-morning on August 31.

The employer did not learn until about 8:00 a.m. on August 31 that the claimant had not picked up the trailer from the Dallas drop yard. As a result of the claimant's failure to work as directed, the employer determined to consider the claimant to have voluntarily quit. He was sent a message to return the employer's truck tractor to the Dallas drop yard. He acknowledged the message, but did not return the tractor to the drop yard until September 1.

The claimant had not taken the trip as directed because he did not wish to make the run as a solo driver, as the pay for the run as a solo driver was much less than that of where it is a team of drivers.

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 have the initial appeal received and treated file a timely within the time prescribed by the Iowa Employment Security Law was due to Agency error 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 intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. 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 appeal in this case is treated as timely. The representative's October 4, 2011 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of August 30, 2011, 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