IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VICKIE L MACE
Claimant

HY-VEE INC
Employer

APPEAL NO. 11A-UI-10720-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/03/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Vickie Mace filed an appeal from the July 27, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 6, 2011. Ms. Mace participated. Paula Mack of Corporate Cost Control represented the employer and presented testimony through Eric Hagerstrom, Greg Westphal, and Jackie Kuennen. Exhibits 1 through 10 and Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Whether there is good cause to treat Ms. Mace's late appeal as a time appeal. There is.

Whether Ms. Mace's voluntary quit was for good cause attributable to the employer. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Vickie Mace was employed by Hy-Vee as a part-time bakery clerk from 2008 until June 18, 2011, when she voluntarily quit due to dissatisfaction with the work environment and a personality conflict with her immediate supervisor, Bakery Manager Greg Westphal. A few days prior to the employment separation, Mr. Westphal had chastised Ms. Mace about not working fast enough. Mr. Westphal had only worked with Ms. Mace one day during the last two and half weeks of her employment. Ms. Mace took offense. On June 18, Ms. Mace notified Assistant Bakery Manager Eric Hagerstrom that she would not be returning to the employment because she could not take it anymore.

The bakery employed adult workers and high-school-aged workers. The high-school-aged workers were not allowed to perform certain tasks that presented a safety risk, such as running the bread slicer or handling the trash compactor, until they turned 18. Mr. Westphal expected the adult employees to assist and monitor the high-school-aged workers as needed to ensure that the work of the bakery got done. Ms. Mace did not like it when she was called to account for work a high school aged worker failed to do in connection with a shift when she had also worked.

Ms. Mace had other dislikes about the employment. Ms. Mace did not like it when Mr. Westphal would counsel her and use words such as "You've been her long enough" or "You know better than that" and the like. Ms. Mace did not like it when the employment implemented a more restricted

hygiene protocol and required Ms. Mace to keep her hair under her hat to prevent contamination of the baked goods. Ms. Mace took offense to Mr. Westphal telling her to “Suck it in, honey” on an occasion when he needed to get by her.

Ms. Mace was upset that she had walked to work in the snow the winter before she quit only to be sent home once she arrived. The employer had tried to notify Ms. Mace not to come in because of the extreme snow fall, but it lacked a current contact phone number for Ms. Mace.

Though Ms. Mace knew that the employer had an open door policy, Ms. Mace did not complain to store management or the human resources department about Mr. Westphal.

Ms. Mace participated in the July 26, 2011 fact-finding interview that resulted in the July 27, 2011, reference 01, decision that denied benefits. Ms. Mace did not receive a copy of the decision and did not learn about the denial of benefits until she contacted her local Workforce Development office on August 15, 2011 to inquire about the status of her claim. Ms. Mace submitted a completed appeal form the Workforce Development staff that day. The Appeals Section received the appeal by fax on August 15, 2011. The July 27, 2011 decision had carried on its face an August 6, 2011 deadline for appeal. That date was a Saturday. Accordingly, the appeal deadline had been extended to Monday, August 8, 2011.

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, subsection 10, 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 appeal at issue in this matter was filed on August 15, 2011, the date on which Ms. Mace delivered her completed appeal form to the Workforce Development staff and the date on which the Appeals Section received the appeal by fax.

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).

The record shows that Ms. Mace did not have a reasonable opportunity to file an appeal by the August 8, 2011 deadline, because she had not received the July 27, 2011 decision by that day. As soon as she learned of the adverse decision, she immediately filed an appeal. The delay in filing the appeal was attributable to Iowa Workforce Development and/or the United States Postal Service. Accordingly, there is good cause to treat the late appeal as a timely appeal.
See 871 IAC 24.35(2). The administrative law judge has authority and jurisdiction to consider and rule on the merits of the appeal.

Iowa Code section 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.

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.

When a worker voluntarily quits due to dissatisfaction with the work environment or a personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (22).

On the other hand, quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service,

431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence in the record fails to establish intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment. The evidence fails to indicate that Mr. Westphal was abusive to Ms. Mace in word or deed. The evidence indicates instead that Ms. Mace became increasingly dissatisfied with the employment, and with Mr. Westphal, and elected to end the employment relationship.

Ms. Mace voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Mace is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Mace.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because Hy-Vee was the only base period employer, there are no other base period wages upon which unemployment insurance benefits might be based.

DECISION:

The Agency representative's July 27, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw