IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ELOY MARTINEZ-VALDEZ
Claimant

TODD & SARGENT INC
Employer

APPEAL NO. 08A-UI-08101-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/30/08 R: 01
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Eloy Martinez-Valdez (claimant) appealed a representative's August 19, 2008 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Todd & Sargent (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2008. The claimant participated in the hearing. Michelle Sime appeared on the employer's behalf. Patricia Vargas served as interpreter. 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 grounds under which it can 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 August 19, 2008. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 29, 2008. The appeal was not filed until he filed it in person at his local Agency office on September 8, 2008, which is after the date noticed on the disqualification decision. He filed the appeal at that time as that was when he was notified of the representative's decision.

The claimant started working for the employer on May 1, 2007. He worked full time as a lead man in the employer's industrial and agricultural construction business. The initial job site the claimant worked was at a construction project in Council Bluffs, Iowa for an ethanol plant. He was aware when he was hired that the Council Bluffs project would only last for approximately a year, and that after that year he might have to work on projects in other localities in order to maintain his employment with the employer. The claimant's last day of work on the Council Bluff's project was about May 22, 2008.

The employer then assigned the claimant to work on a feed mill construction project in Forest City, Iowa, and the claimant agreed. He began work at that site on May 27. His last day of work was July 10. The claimant's foreman had approved a leave for him to go to Mexico to visit family. He was to return to the Forest City work site on July 21. However, he did not return to the work site. On July 21 and July 22 he spoke to representatives of the employer to inform them that his vehicle was unable to make the five-hour drive to Forest City, so he would not be returning. Continued work was available for the claimant had he returned to the work site.

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 file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to error or misinformation or delay or other action of the Agency or 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 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). Even though subjectively the claimant did not want to quit, in fact the claimant did express or exhibit the intent to cease working for the employer and did act to carry it out by his action of not returning to the employer. 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. Failing to continue in one's employment due to a lack of viable transportation is a quit without good cause attributable to the employer unless the employer had promised to furnish transportation, which was not the situation here. 871 IAC 24.25(1). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's August 19, 2008 decision (reference 03) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 21, 2008, 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

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