IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TINA M HELBING
Claimant

TACO JOHN'S
Employer

APPEAL NO. 06A-UI-10089-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/20/06 R: 12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Tina Helbing filed an appeal from the September 25, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 31, 200. Ms. Helbing participated. District Manager Josh Hentjes represented the employer. The administrative law judge took official notice of the Agency's administrative file and received Department Exhibits D-1 and D-2 into evidence.

ISSUES:

Whether the claimant's appeal should be deemed timely. It should.
Whether the claimant voluntarily quit the employment for good cause attributable to the employer. She did not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The September 25, 2006, reference 02, decision was mailed to Tina Helbing's last known address of record on September 25, 2006. Ms. Helbing received the decision in a timely fashion, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 5, 2006. The postmark date on the envelope in which the appeal arrived is illegible. The appeal document bears a completion date of September 27, 2006.

Ms. Helbing was employed by Taco John's as a full-time General Manager in Dubuque from November 2003 until July 26, 2006, when she voluntarily quit. Ms. Helbing's sister's husband had died on May 12, 2006. Ms. Helbing and other members of her family were concerned about the sister and her ability to raise her children. Ms. Helbing provided the employer with a written notice of her quit and indicated that she would be moving to Oregon. Ms. Helbing and other members of her family relocated to Scio, Oregon, where the sister resided. The sister was and is having a difficult time dealing with the death of her husband. Ms. Helbing returned to Dubuque after she concluded she could not find gainful employment in Oregon. At the time Ms. Helbing quit the employment, the employer indicated that it would make a position available

to her if and when she returned, but that it would not be the same position Ms. Helbing had held. When Ms. Helbing returned from Oregon, the employer did in fact offer her a position at its other Dubuque restaurant. Ms. Helbing declined the offer of employment due to lack of transportation.

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). Because he postmark on Ms. Helbing’s appeal is illegible, the completion date on the appeal controls. That date was September 27. Accordingly, Ms. Helbing’s appeal is deemed timely and the administrative law judge has authority to rule on the merits on the appeal.

The next question is whether the evidence in the record establishes that Ms. Helbing’s voluntary quit was for good cause attributable to the employer. It does not.

Iowa Code section 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:
>
> c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

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 person quits employment for the purpose of moving to another locality, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(2).

The greater weight of the evidence in the record indicates that Ms. Helbing quit the employment to relocate to Oregon two and a half months after her sister's husband had died. The evidence indicates that Ms. Helbing's sister was neither ill nor injured. The evidence indicates that Ms. Helbing's decision to return to Iowa and to Taco John's was not tied in any way to her sister's wellbeing. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Helbing voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Helbing 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. Helbing.

DECISION:

The Agency representative's September 25, 2006, reference 02, decision is affirmed. The appeal was timely. The claimant voluntarily quit the employment without good cause

attributable to the employer. The claimant is disqualified for benefits until she has worked in a 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

_____
Decision Dated and Mailed

jet/pjs