IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MYRON S WILLIAMS
Claimant

REMEMDY INTELLIGENT STAFFING INC
Employer

APPEAL NO. 12A-UI-03326-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/11/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Myron Williams filed an appeal from the March 2, 2012, reference 01 decision that denied benefits based on a separation from the employer purported to have occurred on October 14, 2012. After due notice was issued, a hearing was held on April 17, 2012. Mr. Williams participated. Courtney Frey represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether Mr. Williams separated from the employment with Remedy Intelligent Staffing, Inc., for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency and supplies workers to General Mills in Cedar Rapids. Myron Williams began getting work through Remedy Intelligent Staffing, Inc., in July 2007. In September 2007, Mr. Williams began an assignment at General Mills. Though Mr. Williams sometimes worked 40 hours or more in a week, the employment was essentially part-time, on-call. If Mr. Williams showed up for work as scheduled, there was no guarantee that the employer would have work for him that day.

Mr. Williams last performed work in the assignment on July 17, 2011. Mr. Williams was out of town on personal matters from July 18 through July 28, 2011. Mr. Williams was scheduled to work August 1, 2011, but neither appeared for work nor made contact with the employer to let the employer know he could not work the shift. From that point onward, the employer was unable to make further contact with Mr. Williams. Mr. Williams had relocated back to Chicago, though he did not formally move until a couple months later. At the time Mr. Williams ceased appearing for work or making contact with the employer, the employer continued to have work available for him.

Remedy Intelligent Staffing, Inc., was Mr. Williams' sole base period employer.

Mr. Williams participated in the March 29, 2012 fact-finding interview conducted by a Workforce Development representative. On March 2, 2012, the Workforce Development representative mailed a copy of the March 2, 2012, reference 01 decision to Mr. Williams at his last known address of record: 15 East 101st Street, Chicago, Illinois 60628. The decision indicated that an appeal needed to be postmarked or received by the Appeals Section by March 12, 2012. The post office did not deliver the decision to Mr. Williams at his address of record until after Mr. Williams' roommate had already prepared an appeal on his behalf on March 23, 2012. Only then did Mr. Williams and/or his roommate contact the post office and learn that the post office had been withholding mail for the address. Mr. Williams' mailed appeal bears a March 29, 2012 postmark.

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 in question was filed on March 29, 2012, the postmark date on the envelope in which the appeal arrived.

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 Mr. Williams did not have a reasonable opportunity to file a timely appeal by the March 12, 2012 deadline, because he did not receive the decision until after March 23, 2012. The delay in Mr. Williams' receipt of the decision was attributable to the post office not delivering the decision to the address of record indicated on the envelope mailed by Workforce Development on March 2, 2012. No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c). The evidence indicates that the appeal filed on March 29, 2012 was filed within a reasonable time after Mr. Williams received the March 2, 2012, reference 02 decision. There is good cause to treat the appeal as a timely appeal. The administrative law judge has jurisdiction to 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.

When a worker voluntarily quits to relocate to a new locality, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(2).

The weight of the evidence establishes that Mr. Williams voluntarily quit employment to relocate from Cedar Rapids to Chicago. Mr. Williams' voluntary quit was for personal reasons, not for good cause attributable to the employer. Mr. Williams is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Williams. While the employment was part-time, this employer was Mr. Williams' sole base period employer. For that reason, Mr. Williams cannot be considered for reduced benefits, because there are no other base period wage credits. See 871 IAC 24.27

DECISION:

The appeal was timely. The Agency representative's March 2, 2012, reference 01, decision is affirmed. The claimant voluntarily quit without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he 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