IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SEDRICK C BRAIMER
Claimant

R & R SUPERMARKET PARTS
& INSTALLATION LLC % CARDINAL FIN
Employer

APPEAL NO. 10A-UI-13325-VST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/22/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 21, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 9, 2010. Claimant participated. Although the employer responded to the hearing notice and provided a telephone number at which a representative could be reached, voice mail picked up when that number was dialed by the administrative law judge. A detailed message was left for the employer on how to participate in the hearing. The employer did not call in before the record was closed. The record consists of the testimony of Sedrick Braimer. Official notice is taken of agency records.

ISSUES:

Whether the claimant filed a timely appeal; and
Whether the claimant voluntarily quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On July 21, 2010, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also stated that the decision would become final unless an appeal was postmarked by July 31, 2010, or received by the Appeals Section on that date. The claimant's appeal was postmarked on September 24, 2010. The claimant never received a copy of the representative's decision and found out that he had been denied benefits when he called Iowa Workforce Development.

The employer in this case refurbished refrigeration units for Sam's Club stores and Wal-Mart stores. The claimant worked as an installer. One of the challenges in this work was to obtain replacement parts. The employer was obtaining these replacement parts from a company in

Canada. The parts did not meet Wal-Mart specifications and so the employer had to locate another supplier. The difficulty in finding parts also put the employer behind on schedules it was required to meet.

In late May 2010, the claimant was informed that parts had been located for a job in Louisiana. The claimant left his home in Gonzales, Texas, and drove the employer's van to the store location in Louisiana. When he got there, the parts were not there. The claimant phoned Richard Loew, who advised the claimant to go to another store in New Orleans, Louisiana, as parts were there for that refurbishment. When the claimant got to the store in New Orleans, no parts were there. The claimant phoned Mr. Loew. Mr. Loew told the claimant to park the van and go home. The employer no longer needed his services.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 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 claimant testified that he did not receive a copy of the agency decision and that he did not know that benefits had been denied until he called a representative of the agency. The administrative law judge accepts the claimant's testimony and will treat the appeal as having been timely filed.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

871 IAC 24.23(35) provides:

> Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.
>
> (35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The representative ruled that the claimant voluntarily quit his employment on June 26, 2010. The claimant testified that he was informed by the employer in late May 2010 that his services were no longer needed. The claimant was in New Orleans, Louisiana, at the direction of the employer. Parts were supposed to be available to permit the claimant to install refrigeration units at a store there. When the claimant got to New Orleans, no parts were there. When the claimant informed the employer of this fact, the employer told the claimant that his services were no longer needed and that he had to find his own way home. The claimant did not quit his job but was rather laid off permanently for lack of work. Benefits are allowed if the claimant is otherwise eligible.

DECISION:
The decision of the representative dated July 21, 2010, reference 02, is reversed. Benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs