

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RONALD L GARRISON
Claimant

KELLY SERVICES INC
Employer

APPEAL NO. 15A-UI-10836-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/18/15
Claimant: Respondent (2R)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from the February 18, 2015, reference 01, decision that granted benefits. After due notice was issued, a hearing was held on October 12, 2015. The claimant did not participate. The employer did participate through Roberta Shinbori. Employer's Exhibit One was admitted to the record. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether the appeal is timely?

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the employer's last-known address of record on February 18, 2015. Employer did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 28, 2015. The appeal was not filed until September 29, 2015, which is after the date noticed on the disqualification decision. Employer produced a document showing that the appeal in this matter was faxed in in a timely basis. The fax was not received by IWD although the fax was confirmed as received by IWD.

Claimant voluntarily quit his job because he got upset when he was confronted by employer about his attitude while at work. Claimant worked at a local Honda assembly plant recruiting

employees for employer. Claimant's supervisor met with representatives of Honda on January 14, 2015. The Honda representatives believed claimant had a negative attitude that was not portraying their business in a good light. Claimant's supervisor saw claimant as she left the meeting. Claimant called his supervisor asking in a gruff tone what had happened in the meeting. When employer tried to explain that Honda was not happy with his attitude, claimant became highly combative with his supervisor, raising his voice and berating the supervisor.

Claimant's supervisor responded to claimant's diatribe stating that if he felt that way that he was able to quit. Claimant responded that quitting was what he was going to do. Claimant did not work for employer any more after that conversation.

Employer had ongoing work available for claimant and did not intend to terminate claimant's job during the phone call. Employer had not even contacted claimant; claimant called employer.

Employer did substantially participate in the fact-finding interview in this matter. As claimant did not participate in this hearing, information was not received as to benefits received.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(6) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

The ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 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 the appellant did file a timely appeal, but it wasn't received by IWD.

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 an Agency error. As such, the court will address the substantive issues of the matter. Claimant voluntarily quit his job after he called his supervisor and became upset when she tried to counsel him. This quit was not brought about by an action of employer. Claimant's inability to get along with his coworkers and Honda officials does not create a good-cause reason for quitting employment.

The administrative law judge did not receive information on overpayments as claimant did not participate in the hearing. Employer did substantially participate in fact finding.

DECISION:

The February 18, 2015, reference 01, decision is reversed and remanded. The appeal in this case was deemed timely filed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The matter is remanded to the fact finder such that they may determine the amount of overpayment in this matter, if any. Employer's account will not be charged for overpayment as employer substantially participated in fact finding.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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