IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MATTHEW L SCHROEDER
Claimant

CARGILL INCORPORATED
NUTRENA FEEDS
Employer

APPEAL NO: 10A-UI-11499-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/06/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Matthew L. Schroeder (claimant) appealed a representative's July 1, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Cargill Incorporated/Nutrena Feeds (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2010. The claimant participated in the hearing. Michelle Moorehead appeared on the employer's behalf. 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 legal 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 July 1, 2010. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 11, 2010, a Sunday, extended to Monday, July 12. The appeal was not treated as filed until it was postmarked on August 16, 2010, which is after the date noticed on the disqualification decision. The appeal that was postmarked on August 16 was the second appeal made by the claimant; he had taken his initial appeal to his local Agency office on or by July 12 and had been assured it would be faxed to the Appeals Section that day. However, despite being advised by staff at the local Agency office that his appeal had been submitted, that appeal was never received by the Appeals Section.

The claimant started working for the employer on August 10, 2009. He worked full time as feed house loader and operator on the second shift at the employer's Cedar Rapids, Iowa corn milling plant. His last day of work was June 2, 2010.

The claimant called in an absence on June 3 due to his daughter having surgery in Minnesota. He was not scheduled for work on June 4. On June 5 he called in an absence because he was still with his daughter in Minnesota. Beginning June 6 he was a no-call/no-show for work; he did not make any further contact with the employer at any time after June 5. After the claimant had been a no-call/no-show for three consecutive days, the employer deemed the claimant to have voluntarily quit under its three-day no-call/no-show policy.

The claimant had been arrested while in Minnesota and was in jail on June 6 into June 7. He did return to Cedar Rapids later on June 7, although he would have been late for work had he returned. The claimant assumed he might have been discharged because of his no-call/no-shows those two days, but he then chose not to attempt to return to work on and after June 8.

The reason the claimant chose not to seek to return to work was that he had been subject of harassment from two coworkers. Earlier in the year the two coworkers had been harassing him and another employee. The matter was reported to the claimant's department supervisor and the plant superintendent. The employer investigated, and the two coworkers were instructed to stop. The employer advised the claimant that should there be any further problems, he should inform one of the supervisors or Ms. Schaatveld, the human resources coordinator, and additional action would be taken. The coworkers' harassment of the claimant did cease for a period of time.

In about mid-May the claimant began receiving daily calls on his cell phone from the two coworkers, harassing him and making threats against the claimant and the claimant's fiancée. Despite the instruction he had been given by the employers, he determined not to report the renewed harassment. When he was faced with returning to work on June 8 after his absences, he decided not to return to that situation.

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 Agency error or misinformation or delay or other action of 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). A three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. 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. Harassment by coworkers does have the potential of being a good cause for quitting attributable to the employer. However, while a claimant does not have to specifically indicate or announce an intention to quit if his concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that he considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address his concerns. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005); Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the employer." Under this logic, if in the alternative the claimant demonstrates that the employer was independently aware of a condition that is clearly intolerable, unlawful, or unsafe, there would be no need for a separate showing of notice by the claimant to the employer; if the employer was already aware of an obvious problem, it already had the opportunity to address or resolve the situation. The employer had previously demonstrated that it would address the problem, and had advised the claimant it would take further action if the problem reoccurred. However, when the problem

reoccurred, the claimant did not give the employer notice that there was again an issue and therefore did not give the employer the opportunity to take additional action. The problem therefore cannot be determined as "attributable to the employer." The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative's July 1, 2010 decision (reference 01) is affirmed. The appeal is treated as timely. The claimant voluntarily left his employment without good cause attributable to the employer. As of June 6, 2010, 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.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css