**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS G BAILEY**
Claimant

**METOKOTE CORPORATION**
Employer

**APPEAL NO: 12A-UI-08561-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 04/22/12**
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Douglas G. Bailey (claimant) appealed a representative's May 14, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Metokote Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 10, 2012. The claimant participated in the hearing. Megan Rogers 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 should 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 May 14, 2012. The address was actually that of the claimant's mother; he testified that he did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 24, 2012. The appeal was not filed until July 17, 2012, which is after the date noticed on the disqualification decision. He appealed when he learned of the decision by going to his local Agency office.

After a prior period of employment working with the employer through a temporary employment firm, the claimant started working directly for the employer on March 2, 2009. He worked full time as an intermediate coating operator on a second shift. His last day of work was October 24, 2011.

The claimant had requested and been approved for a vacation leave from October 25 through November 7; he was to return to work at 2:00 p.m. on November 8. The claimant did not report for his shift at that time. While the claimant asserts that he called in to the employer's attendance line perhaps two times when he realized that he would not be able to be back to work by November 8, the employer's records show no calls from the claimant; he was considered to be a no-call/no-show for his shifts on November 8, November 9, November 10, and November 11. As of November 11 the employer considered the claimant a voluntary quit under the employer's three-day no-call/no-show job abandonment policy of which the claimant was on notice.

The claimant had gone to Arizona by bus for his vacation but did not have sufficient money to purchase a return ticket. He assumed by the end of the week of November 11 that since he had not been able to return from his vacation that he no longer had a job; he spoke to a former coworker in about December who verified that he no longer had a job with the employer. The claimant did not return from Arizona until after the first of January 2012.

**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). However, the intent to quit can be inferred in certain circumstances. For example, a three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). Also, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit 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. Failing to be able to return to work at the end of an approved period of vacation leave is not a good cause attributable to the employer. For example, a three-day no-call/no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4); 871 IAC 24.25(25). The claimant has not satisfied his burden. Benefits are denied.

**DECISION:**

The appeal in this case is treated as timely. The representative's May 14, 2012 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of November 11, 2011, 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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