IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ANTHONY C WILLIAMS Claimant **SHORT STAFFED INC** Employer	**APPEAL NO. 20A-UI-12343-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/21/20** **Claimant: Appellant (2R)**

Iowa Code Section 95.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Anthony Williams filed a late appeal from the September 4, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Williams voluntarily quit the employment on June 9, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 10, 2020. Mr. Williams participated and was represented by attorney Grant Beckwith. Mr. Beckwith presented testimony through Mr. Williams and through Shannon Peter. The employer did not provide a telephone number for the appeal hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-DUA-00574-JTT. Exhibits 1 through 4 and Department Exhibits D-1 through D-12 were received into evidence.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely. Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 4, 2020, Iowa Workforce Development mailed the September 4, 2020, reference 01, decision to the claimant at his Sioux City last-known address or record. The reference 01 decision disqualified the claimant for unemployment insurance benefits, based on the deputy's conclusion that the claimant voluntarily quit employment with Short-Staffed, Inc. on June 9, 2020 by failing to notify the temporary employment firm within three days of completing the last work assignment, after having been told in writing of his responsibility to notify the temporary employment firm. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by September 14, 2020 or received by the Appeal Section by that date. The claimant did not receive the September 4, 2020, reference 01, decision until the administrative law judge provided the claimant's counsel with a copy for use at the December 10, 2020 appeal hearing.

On September 21, 2020, Iowa Workforce Development mailed an Assessment for PUA Benefits to the claimant's last-known address of record. The September 21 decision denied PUA benefits. The September 21 decision stated that the decision would become final until an appeal was postmarked by October 2, 2020 or received by the Appeal Section by that date. The claimant received the Assessment for PUA Benefits on September 25, 2020.

On October 2, 2020, the claimant met with a representative of Iowa Legal Aid and prepared an online appeal. The online appeal references a reference 01 decision as the decision from which the claimant was appealing. The Assessment for PUA Benefits did not include a decision reference number. The October 2, 2020 appeal references a September 21, 2020 decision date and receipt of the decision on September 25, 2020, both of which point to the appeal being from the September 21, 2020 Assessment for PUA Benefits. The body of the October 2 appeal provides information that would be relevant to both an appeal from the September 4, 2020, reference 01, decision and from the September 21, 2020 Assessment for PUA Benefits.

The Appeals Bureau received the electronically transmitted appeal on October 2, 2020 and docketed an appeal from both the September 4, 2020, reference 01, decision and from the September 21, 2020 Assessment for PUA Benefits.

In March 2020, the claimant commenced employment with Short Staffed, Inc., a temporary employment agency. At that time, Short Staffed placed the claimant in a full-time, temp-to-hire work assignment at IML Containers in Le Mars. The claimant has at all relevant times resided in Sioux City, Iowa. The work involved a 20-plus mile commute from Sioux City to Le Mars. Short Staffed provided transportation to and from the workplace in a 12-passenger van. Ten to 12 workers usually shared the commute. In light of the COVID-19 pandemic, Short Staffed took the temperature of its employees before they were allowed to board the passenger van as a screening measure to prevent those with a fever from entering the van and exposing other employees to illness. Short Staffed had a policy in place that required employees to wear a mask to hinder the spread of COVID-19. The van driver was responsible for enforcing the mask policy. However, Short Staffed did not enforce the mask policy and the claimant was the only passenger who wore a mask during the commute. Short Staffed also had a COVID-19 based policy of sanitizing the van between commutes. The claimant did not observed the sanitation policy being followed in connection with his commute. IML screened workers for fever before granting entrance to its facility.

Throughout the employment, the claimant was keenly interested in avoiding exposure to and avoiding contracting COVID-19. The claimant resides with his fiancée and her 18-year-old dependent adult son. The young man suffers from asthma and is under the care of a doctor for that health condition. The young man's doctor has identified the young man as a person health at increased risk of severe illness if he contracted COVID-19. In addition, the claimant's fiancé has a history of cancer and thyroid issues that were a cause for concern in the context of the COVID-19 pandemic. The claimant did not have any personal health issues that would place him at increased risk of severe illness if he contracted COVID-19. The claimant was concerned when his fellow mask-less passengers coughed during the work commute.

Throughout the brief employment, the claimant complained to Short Staffed managers several times about the risk posed by the failure to enforce the mask policy on the passenger van. Short Staff personnel told the claimant that he could find his own transportation to and from work if she did not like the commuting conditions offered by the employer. The claimant lacked driving privileges and was without a means to get to IML without the employer's assistance.

The claimant last performed work for Short Staffed and in the IML assignment on May 27, 2020. The claimant then elected to leave the employment, rather than continue in the assignment in the absence of enforcement of the mask policy. Prior to leaving the employment, the claimant inquired about other potential assignments at IML, but those would have involved the same commuting arrangement. The claimant did not inquire about assignments with other clients.

There is no indication in the record that the employer had the claimant sign a policy that would obligate the claimant to contact the employer upon completion of an assignment to request a new assignment. In this instance, the claimant did not actually complete the assignment in question and voluntarily quit before the assignment was completed.

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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

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 evidence in the record establishes good cause to treat the claimant's late appeal from the September 4, 2020 decision as a timely appeal. The claimant did not receive the decisions until it was provided in connection with the appeal hearing and did not have a reasonable opportunity to file an appeal by the September 14, 2020 appeal deadline. The weight of the evidence establishes delay attributable to the United States Postal Service or to IWD. Because there is good cause to treat the late appeal as a timely appeal, the administrative law judge has jurisdiction to enter a decision on the merits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

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.

Iowa Admin. Code r. 871-24.26(2) and (4) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (2) The claimant left due to unsafe working conditions.

…
(4) The claimant left due to intolerable or detrimental working conditions.

The test of whether a working condition was intolerable or detrimental includes a determination of whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The evidence in the record establishes a voluntary quit on or about May 27, 2020 that was for good cause attributable to the employer. In the context of the COVID-19 pandemic, which now accounts for more 4,000 Iowa deaths, the employer's refusal to enforce its own mask policy during the lengthy commute was inherently unreasonable and demonstrated a reckless disregard for the safety of its employees, including the claimant. The employer's refusal to enforce its own COVID-19 safety precaution created a working condition that was both intolerable and detrimental to the claimant. A reasonable person in the claimant's circumstances would have left the employment. The administrative law judge notes that the employer did not participate in the appeal hearing and did not present any evidence to rebut the claimant's testimony. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

Iowa Code section 96.5(1)(j) does not apply. This case is not about whether the claimant contacted the employer upon completion of a work assignment. Indeed, pursuant to *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005), the claimant under no obligation to request a new assignment in the context of the intolerable and detrimental circumstances. The claimant decidedly did not complete the assignment. Even if this case had been about what happened upon completion of a work assignment, the employer did not present any evidence to establish that the employer complied with the notice requirements set forth that Iowa Code section 96.5(1)(j)(2).

This matter will be remanded to the Benefits Bureau for determination of whether the claimant has been available for work since he established the original claim for benefits.

DECISION:

The September 4, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The quit was effective May 27, 2020. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

This matter is **remanded** to the Benefits Bureau for determination of whether the claimant has been available for work since he established the original claim for benefits.

James E. Timberland
Administrative Law Judge

February 1, 2021
Decision Dated and Mailed

jet/mh