IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VICTORIANO SALINAS
Claimant

MONSANTO COMPANY
Employer

APPEAL NO. 09A-UI-07503-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 03/22/09
Claimant: Appellant (1/R)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 - Timeliness of Appeal
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Victoriano Salinas (claimant) appealed a representative's April 15, 2009 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Monsanto Company. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2009. The claimant participated in the hearing. Dawn Caffman 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.

ISSUE:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on April 10, 2009. He did not move from that address until the end of April or the beginning of May. No evidence was provided to rebut the presumption that the claimant received the decision within a few days after April 15. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 25, 2009, a Saturday. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, April 27. The appeal was not filed until it was hand-delivered to a local Agency office on May 19, 2009, which is after the date noticed on the disqualification decision. The claimant had not filed earlier as he thought he was just trying to receive extended benefits on a previously allowed claim. He did not truly wish to appeal or challenge the separation decision regarding this employer, but rather had disagreed with and wished to appeal a separation decision regarding a different, more recent employer. However, the claimant did not earn requalifying wages after his separation from Monsanto so as to make that separation moot as to his eligibility.

The claimant started working for the employer on July 1, 2007. He worked full time as an agricultural field worker, primarily in the employer's Williamsburg, Iowa location. However, for the

first and second quarters of 2008 he did some work in and was paid from an employer account for a location in Hawaii. He returned to the Williamsburg location in March 2008, and continued his regular employment. His last day of work was June 27, 2008. The claimant quit at that time to look for other work to make more money. He did not have a job offer and had not found another job with another employer at the time he quit.

The claimant established an unemployment insurance benefit year effective March 23, 2008, during the layoff period transitioning locations with Monsanto, but he did not receive any unemployment insurance benefits at that time. After leaving Monsanto, the claimant did obtain other employment for a brief period with a new employer, but that employment ended as of July 18. The claimant's unemployment claim was reopened without a new claim being processed as of October 19, 2008, so that more recent employment was not reviewed at that time, nor was his June 27 separation from Monsanto. The claimant exhausted regular benefits as of the week ending February 28, 2009. He then reopened his claim to receive EUC (emergency unemployment compensation), which he did for three weeks until his claim year expired March 22, 2009. He then established a second benefit year effective March 22, 2009. The June 2008 separation from employment with Monsanto was reviewed at that time, with the conclusion that there was a disqualifying June 27, 2008 separation from employment.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

Even if the appeal were treated as timely, the result would be the same. If the claimant voluntarily quit his employment with Monsanto, 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). 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. Quitting in order to search for a new job, where the new job was not obtained prior to the resignation, is not a good cause attributable to the employer. 871 IAC 24.25(3). The claimant has not satisfied his burden. Benefits are denied as of June 27, 2008 until he has requalified by earning ten times his weekly benefit amount.

An issue as to whether the claimant should have been receiving benefits beginning in October 2008 arose as a result of this proceeding. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's April 15, 2009 decision (reference 02) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Benefits are denied as of June 27, 2008. The matter is remanded to the Claims Section for investigation and determination of the potential overpayment issue.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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