IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LISA D GONZALES
Claimant

SUBNORTH INC
Employer

APPEAL NO. 09A-UI-11168-SWT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 06/07/09
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 17, 2009, reference 02, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on August 20, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with witnesses, Jeffrey Sunders and Marvin Pierce. Gerald Vernon participated in the hearing on behalf of the employer with a witness, Steve Stender. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the claimant file a timely appeal?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked full-time as an assistant manager until January 7, 2009. She had previously worked in the employer's restaurant in Council Bluffs, Iowa, but was transferred to a store in Omaha, Nebraska, at the end of December 2008. Amber Thexton was the store manager. Steve Stender is the director of operations for the employer.

On January 7, 2009, the claimant reported to work complaining of head, neck, and stomach pain. Thexton told the claimant to take the day off and see a doctor. The claimant sent a text message to the Thexton on January 8 stating that she was still ill and the doctor had not determined what was wrong. She sent a text message on January 9 stating that she was having medical tests done and would not be at work.

On January 10, the claimant sent a text message to Thexton she was still ill and the doctor believed she had a pinched sciatic nerve. On January 11, Thexton sent the claimant a text message asking if she was going to be at work on January 12. In the claimant's response, she asked if she needed a doctor's release to return to work. When Thexton responded that she would need a doctor's release, the claimant told Thexton she would be going to the doctor on

January 13 and would get the doctor's release. On January 12, the claimant requested a workers' compensation incident report because she claimed the problems were due to lifting some boxes at work. Thexton then reported the incident to the workers' compensation carrier on January 13.

On January 19, 2009, the claimant's doctor prepared a statement stating that the claimant was to be off work indefinitely. The employer accepted his statement and considered the claimant on medical leave until she was released to return to work. There is no competent evidence in the record that the claimant's medical condition was related to her employment with the employer.

On March 5, the claimant sent a text message to Thexton asking if she was still employed. Stender replied to the message by leaving a message for the claimant: that she was still employed and the employer was waiting for her to submit a doctor's statement releasing her to return to work. She was instructed to give Thexton a release and she would be put back on the schedule.

The next contact the claimant had with the employer was on June 11, when she asked Thexton about returning to work three days per week for three hours of work per day. The request was forwarded to Scott Simpson, the president of the company.

The claimant filed a claim for unemployment insurance benefits during the week of June 7, 2009. She was not released to work without restrictions when she applied for unemployment insurance benefits. She had not been discharged when she filed for benefits.

On June18, 2009, Simpson sent a letter to the claimant. In the letter, Simpson informed the claimant that the assistant manager position was full-time and the employer could not accommodate her working part-time in that position but would allow her to work part-time as a sandwich artist position at a reduced rate of pay. She was informed that the employer was willing to extend her medical leave until June 30, 2009, and if she produced a release to return to work full-time before that date, she would be allowed to return to her assistant manager position. Simpson requested the claimant call him with her decision by June 22.

The claimant received the letter on June 23, but she did not contact Simpson as the letter requested. When the employer had not heard from the claimant by June 30, the employer considered the claimant to have abandoned her job.

The claimant sent a text message to Thexton on July 1, 2009, stating that she had been trying to get a hold of the office to let them know she had got the letter but had received no response. She also sent a text message to Stender stating she had not received a response from the office and asking if she still had a job. On July 2, Stender responded by text message that the claimant should review the letter and when she was capable of responding with the required information, to let him know. The next time the claimant contacted the employer was July 12, when she sent a text message to Stender asking if she got a release to return to work full-time, did she still have a job as an assistant manager. No one responded to the text message.

The claimant was not released to return to work without restrictions until July 15, 2009. She has not contacted the employer about returning to work since then, because she considered her employment terminated.

The claimant never received the disqualification decision mailed to her on July 17, 2009, which contained a deadline for appealing of July 27, 2009. She filed a written appeal on August 5, 2009, immediately after she was informed about the decision.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

Iowa Code § 96.6-2 states that appeals must be filed within ten days after a decision has been mailed to the party's last known mailing address or the decision is final. The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired. The appeal, however, is deemed timely because the claimant did not have a reasonable opportunity to file a timely appeal, because she never received the decision in the mail.

The next issue is whether the claimant voluntarily quit employment without good cause attributable to the employer. The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1.

As an initial matter, I concluded the provision of the law that deals with work-related injuries (871 IAC 24.26(6)b) does not apply here, because there is no medical information to support such a finding.

The unemployment insurance law provides that an individual is qualified to receive benefits if she: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d.

The claimant filed her claim for unemployment insurance benefits during the week of June 11, 2009. She testified that she filed for unemployment benefits because Thexton had told her she had been discharged. This is not supported by the evidence, based on what happened between the parties after June 11. As of June 11, the claimant had not satisfied the conditions of Iowa Code § 96.5-1-d, because she still had not been released to return to work by her doctor.

The claimant is disqualified from receiving unemployment insurance benefits effective June 7, 2009. I further conclude that the claimant must be considered to have abandoned her job by not contacting Simpson or reporting to work by the end of her medical leave on June 30. Simpson did not state the claimant would be terminated if she did not contact him by June 22, he requested the claimant call him with her decision by June 22. The claimant waited until after June 30 to contact Thexton and Stender. I conclude she did not make reasonable efforts to maintain her employment. So much of the communication was via text message, an inferior method of communication than actually talking to a person, as demonstrated in this case.

DECISION:

The unemployment insurance decision dated July 17, 2009, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw