

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOHN SAYPOH**  
Claimant

**LOFFREDO GARDENS INC**  
Employer

**APPEAL 20A-UI-13122-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

John Saypoh (claimant) appealed a representative's September 30, 2020, decision (reference 04) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Loffredo Gardens (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 22, 2020. The claimant participated personally. The employer participated by Maria Cornejo, Senior Human Resources Manager, and Joe Chavez, Production Manager.

Exhibit D-1 was received into evidence. The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

The claimant was hired from August 7, 2019, to September 12, 2019, and from January 3, 2020, through January 17, 2020, as a full-time machine operator. During his first period of employment, he commented to Ms. Cornejo about a co-worker's behavior. She asked if he was complaining. The claimant said he was not. He thought it was a joke and did not want to get the co-worker in trouble. After September 12, 2019, the claimant stopped appearing for work and quit.

When the claimant returned and was rehired, he mentioned the co-worker's behavior. The employer said it would monitor the situation. It did and found that nothing happened. The claimant never complained. After January 17, 2020, the claimant did not appear for work.

Continued work was available with the employer had the claimant not resigned. The claimant later said he was harassed by the co-worker and quit work.

A disqualification decision was mailed to the claimant's last known address of record on September 30, 2020. The decision was received by the claimant within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 12, 2020. The appeal was not filed until October 16, 2020, which is after the date noticed on the disqualification decision. The claimant did not read the instructions and did not know how to file the appeal.

## **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 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).

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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

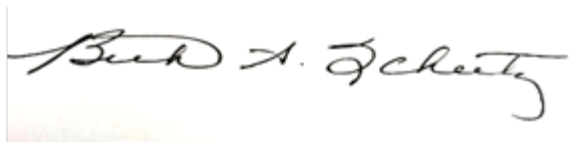
The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

#### **DECISION:**

The September 30, 2020, reference 04, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is not eligible to receive unemployment insurance benefits.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz  
Administrative Law Judge

January 8, 2021  
Decision Dated and Mailed

bas/scn