

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELLI L KLONGLAN
Claimant

FARNER-BOCKEN CO
Employer

APPEAL 17A-UI-05443-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/22/17
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 11, 2017, (reference 04) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on June 8, 2017. Claimant participated. Employer participated through customer service manager/attorney James Heiliger. Shipping supervisor Josh Sporrer attended the hearing on behalf of the employer, but he did not testify. Chuck Perrin registered for the hearing on behalf of the employer, but he did not attend the hearing. Employer Exhibit 1 was admitted into evidence with no objection. Official notice was taken of the administrative record, including claimant's benefit payment history, fact-finding documents, and claimant's appeal letter, with no objection.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An ineligibility unemployment insurance decision was mailed to claimant's last known address of record (445 Highway 175 Avenue, Ellsworth, Iowa) on May 11, 2017. Claimant received the decision on Saturday, May 20, 2017, within the appeal period. Claimant read the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 21, 2017; however, May 21, 2017 was a Sunday, therefore claimant had until May 22, 2017 to file her appeal. On May 22, 2017, claimant called Iowa Workforce Development (IWD), but no one answered the phone. Claimant received a message giving the operating hours and IWD would not be available until May 23, 2017. Claimant did not try to call IWD on May 23, 2017. Claimant did not try to file her appeal on May 22 or 23, 2017. The appeal was not filed until May 24, 2017, which is after the date noticed on the unemployment insurance decision. Claimant waited until May 24, 2017 to file her appeal because she was waiting to get her hospital records.

Claimant was at the 445 Highway 175 Avenue, Ellsworth, Iowa address in the month of April 2017. Claimant was at this address of record when she filed her claim for benefits after her separation from the employer. Around the beginning of May 2017, claimant changed to her current address (106 2nd Street, Apartment 4, P.O. Box 35, Bayard, Iowa). Starting May 9, 2017, claimant had her mail forwarded from the Ellsworth, Iowa address to her current Bayard, Iowa address. A fact-finding interview regarding claimant's separation was held on May 10, 2017. Claimant was aware of the fact-finding interview on May 10, 2017, but she did not participate because her phone was broken. On May 10, 2017, claimant called Iowa Workforce Development (IWD) approximately an hour after the fact-finding interview. The IWD employee told claimant she would get a decision in the mail and then forwarded her call to the fact-finder. Claimant left a message for the fact-finder. Claimant was living at the current Bayard, Iowa address on May 10, 2017, but she did not inform IWD or have IWD update her address of record on May 10, 2017. On May 24, 2017, claimant updated her address of record with IWD to the Bayard, Iowa address.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes claimant's appeal is untimely.

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, subsection 10, 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. Bd. 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 unemployment insurance 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Although claimant was using her current Bayard, Iowa address prior to May 10, 2017, she failed to update her address of record with IWD until May 24, 2017, even though she spoke to an IWD employee on May 10, 2017. Furthermore, claimant received the decision denying her benefits within the appeal period, but she failed to file her appeal within the appeal period. Claimant received the decision on May 20, 2017 and had until May 22, 2017 to file her appeal within the appeal period, but she waited over twenty four hours after the expiration of the appeal deadline before she filed her appeal.

The administrative law judge concludes that failure to follow the clear written instructions 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 Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The May 11, 2017, (reference 04) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs