

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEDAH I CHISM
Claimant

RESTAURANT CONCEPTS INC
Employer

APPEAL 19A-UI-00316-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/02/18
Claimant: Appellant (1)**

Iowa Admin. Code r. 871-24.25 – Voluntary Quitting Without Good Cause
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

Jedah Chism, Claimant, filed an appeal from the December 20, 2018 (reference 01) unemployment insurance decision that denied benefits because she voluntarily quit work with Restaurant Concepts, Inc. without good cause. The parties were properly notified of the hearing. A telephone hearing was held on January 29, 2019 at 11:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant's appeal is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on December 20, 2018. Claimant received the decision on Thursday, December 27, 2018. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeal Section by December 30, 2018; however, if that date falls on a Saturday, Sunday or Holiday, the appeal period is extended to the next working day. December 30, 2018 was a Sunday. Therefore, claimant's appeal was due Monday, December 31, 2018.

Claimant mailed her appeal on January 11, 2019 (Claimant Testimony), which is corroborated by the postmark on the envelope in which claimant's appeal was mailed. Claimant's appeal was received by the Appeal Section on January 14, 2019. Claimant alleges that she did not mail her appeal prior to the deadline because she did not know she needed to appeal the decision. (Claimant Testimony) Claimant further alleges that she was told by someone at workforce development that she needed to reapply for benefits because she was "locked out." (Claimant Testimony) Claimant does not recall with whom she spoke at workforce development or the date of the conversation; however, claimant reapplied for benefits on December 24, 2018.

(Claimant Testimony) Claimant does not allege that she was told not to appeal the decision.
(Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is not timely.

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. (emphasis added)

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the

division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date the 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.

Claimant had four days to mail her appeal between the date she received the decision and the appeal deadline. The appeal instructions on the unemployment insurance decision are clear. Claimant alleges that she did not file her appeal before the deadline because she did not believe it was necessary due to information given to her by an Iowa Workforce Development employee. However, claimant does not allege that the employee told her *not* to file an appeal. Also, claimant received the unemployment insurance decision after her telephone call with the workforce development employee. Claimant's delay was caused by her confusion and not due to agency error or misinformation or delay by the United States Postal Service. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The December 20, 2018, (reference 01) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs