

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICHOLE CLEGHORN
Claimant

APPEAL NO. 21A-UI-04432-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTOONA NURSING AND REHAB
Employer

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a late appeal from the July 17, 2020 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 26, 2020 without good cause attributable to the employer. After due notice was issued to the claimant, a hearing was held on April 8, 2021. The claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-04433-JTT. At the time of the hearing Exhibits A (online appeal) and B (8/9/2020 claimant correspondence with uicclaimshelp@iwd.iowa.gov) were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KFFV, NMRO, the July 17, 2020 (reference 01) decision and the January 26, 2021 (reference 02) decision.

The administrative law judge left the hearing record open through April 9, 2021 for the limited purpose of (1) allowing the claimant additional opportunity to produce correspondence regarding the timeliness of appeal issue and (2) soliciting from IWD Workforce Advisor Matthew Williams correspondence, if any, between the claimant and Mr. Williams during period of July 17, 2020 through August 9, 2020. The claimant produced a fact-finding questionnaire with a July 14, 2020 response date, which was received into the hearing record as Exhibit C. The administrative law judge's email inquiry directed to Mr. Williams and Mr. Williams' response were received into evidence as department Exhibit D-1.

The employer did not provide a telephone number for the appeal hearing and did not participate. Subsequent to the appeal hearing, the administrative law judge learned that the Agency's address of record for the employer was inaccurate. Altoona Nursing and Rehabilitation Center is located on 7th Avenue S.W., rather than 77th Avenue SW. In addition, the actual name and address of record for the employer is Pinnacle Health Facilities XVII L.P., P.O. Box 280100, Nashville, TN 37228. Altoona Nursing and Rehabilitation Center is in effect a DBA for Pinnacle. The employer account number is 354822.

The discovery of the employer address of record issue raises multiple concerns, not only regarding the lack of proper notice to the employer for the appeal hearing set for April 8, 2020, but also the presumed lack of notice to the employer regarding the fact-finding interview that led

to the July 17, 2020 (reference 01) decision and the presumed lack of notice to the employer regarding the July 17, 2020 (reference 01) decisions. Because the employer is not aggrieved by the July 17, 2020 (reference 01) decision or the present decision, the administrative law judge concludes, in light of the timeliness of appeal determination and in the interest of Agency efficiency, that it is not necessary to reschedule and reopen the appeal hearing or to remand the matter for a new fact-finding interview. If the employer desires to reopen the hearing record, the employer may appeal this decision or submit a written request to reopen within 15 days of the mailing date of the present decision.

ISSUE:

Whether the appeal was the July 17, 2021 (reference 01) decision was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for unemployment insurance benefits that was effective April 12, 2020. The claimant made weekly claims for the 15 consecutive weeks between April 12, 2020 and July 25, 2020. The claimant received \$275.00 in weekly regular state benefits for each of the 13 weeks between April 12, 2020 and July 11, 2020. The regular benefits totaled \$3,575.00. The claimant would also have received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of those 13 weeks.

On July 17, 2020, Iowa Workforce Development mailed the July 17, 2020 (reference 01) decision to the claimant at her Des Moines last-known address of record. The decision followed the claimant's participation in a fact-finding interview conducted via questionnaire. The claimant received the reference 01 decision in a timely manner, most likely within a day or two of the July 17, 2020 mailing date. The decision disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 26, 2020 without good cause attributable to the employer. The decision stated that it would become final unless an appeal was postmarked by July 27, 2020. The decision included clear and concise instructions for filing an appeal. The claimant did not take steps to file an appeal by the July 27, 2020 appeal deadline. On August 9, 2020, the claimant sent an email message to the uicclaimshelp@iwd.iowa.gov mailbox inquiring about Pandemic Unemployment Assistance (PUA) benefits. In that email, the claimant referenced her earlier receipt of unemployment insurance benefits and denial of benefits.

On January 26, 2021, Iowa Workforce Development mailed the January 26, 2020 (reference 02) decision to the claimant at her last-known address of record. The reference 02 decision held that the claimant was overpaid \$3,575.00 in regular benefits for 13 weeks between April 12, 2020 and July 11, 2020, based on the earlier decision that disqualified the claimant for benefits. The reference 02 decision included a February 5, 2021 deadline for appeal.

On February 1, 2021, the claimant completed and transmitted an online appeal from the reference 02 decision. The Appeals Bureau received the appeal on February 1, 2021 and treated the appeal from the overpayment decision as also a late appeal from the earlier disqualification decision.

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the July 17, 2020 (reference 01) disqualification decision and February 1, 2021 appeal. 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 evidence establishes that the appeal from the July 17, 2020 (reference 01) decision was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the July 27, 2020 appeal deadline, but did not file an appeal by the deadline. Indeed, there was no actual appeal filed until February 1, 2021. Because the late filing of the appeal was not attributable to IWD error or misinformation or delay or other action of the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal from the July 17, 2020 (reference 01) decision was untimely, the administrative law judge lacks jurisdiction to disturb that decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the July 17, 2020 (reference 01) decision was untimely. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 26, 2020 without good cause attributable to the employer, remains in effect.



James E. Timberland
Administrative Law Judge

April 13, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**