

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JON C KRANOVICH**  
Claimant

**APPEAL NO: 13A-UI-10672-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 05/12/13**  
**Claimant: Appellant (1)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury  
871 IAC 24.25(35) – Separation Due to Illness or Injury  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Jon C. Kranovich (claimant) appealed a representative's May 31, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Target Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 14, 2013. This appeal was consolidated for hearing with one related appeal, 13A-UI-10673-DT. The claimant participated in the hearing. Delaine Dahl appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely? Did the claimant voluntarily quit for a good cause attributable to the employer?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last-known address of record on May 31, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 10, 2013. The appeal was not filed until it was postmarked on September 18, 2013, which is after the date noticed on the disqualification decision. The claimant has a learning disability and is only able to read at a third grade level; he did not understand the representative's decision and did not realize that he needed to make an appeal to challenge the decision.

The claimant started working for the employer on July 1, 2008. He worked part time (about 20 hours per week) as a flow replenishment team member doing overnight stocking at the employer's Davenport, Iowa store. His last day of work was May 16, 2013. He voluntarily quit as of that date.

The claimant's reason for quitting was that he was experiencing dizzy spells, chest pain, and felt he had a pulled muscle; he concluded that he was unable to continue working for the employer. The claimant was not advised by a medical practitioner to quit, and he has not provided any evidence to suggest that the condition was caused or aggravated by conditions in the workplace. His job was not in jeopardy had he not resigned.

#### **REASONING AND CONCLUSIONS OF LAW:**

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 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 not 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 due to factors outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Where the quit is for medical or health reasons, the quit is disqualifying unless the medical or health issue is shown to be attributable to the employer or, if not attributable to the employer, if the claimant's physician had advised that he quit, and that he later recovered and sought to return to work. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

The claimant has not established that the condition was attributable to the employer or that he was advised by his physician to quit. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

**DECISION:**

The appeal in this case is treated as timely. The representative's May 31, 2013 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of May 16, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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