IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JOHN V MASSAKI Claimant **WHIRLPOOL CORPORATION** Employer	**APPEAL 21A-UI-11923-CS-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/03/21** **Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On April 29, 2021, the claimant/appellant filed an appeal from the March 31, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2021. Claimant participated through interpreters Lojaine #13674 and through Boubacar #1233 with CTS Language Link. Employer participated through Human Resources Specialist Eric McGarvey.

ISSUES:

Was the appeal timely?

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A Iowa Workforce Development unemployment insurance decision was mailed to the claimant's last known address of record on March 31, 2021. Claimant cannot testify he received the decision within the appeal period but he acknowledges he received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 10, 2021. Claimant testified he checks his mail daily but he cannot testify if he received it prior to April 10, 2021. The appeal was not filed until April 28, 2021. Claimant testified he traveled to Ohio at the end of March and was there for ten days. Claimant could not testify specifically which days he was there. Claimant testified that after he reviewed the letter he immediately appealed the decision.

Claimant began working for employer on May 15, 2017. Claimant last worked as a full-time plant utility. Claimant was separated from employment on June 1, 2021, when he was discharged by the employer for job abandonment.

On March 24, 2020, claimant was at work and the employer closed the facility and sent all the employees home for two weeks due to two employees testing positive for COVID-19. Claimant was supposed to return to work on April 6, 2020. Around this time the claimant became unwell and started displaying the symptoms of COVID-19. Claimant testified he called into a phone line provided by the employer and told them he was having COVID symptoms. The recipient of the call told claimant to take some medication.

Claimant did not return to work on April 6, 2020, April 7, 2020, or April 8, 2020. Claimant did not call or show up for work. Claimant was ill and stayed home through the month of April. The employer had a policy that stated if an employee did not show up for work or call into work for three days that it was deemed job abandonment. The employer provided the policy to the claimant when he was hired and it was in his union contract. Claimant acknowledge he knew the policy. Employer waived this policy for a period of time due to the COVID-19 pandemic.

Claimant's COVID- 19 illness became worse and he was eventually hospitalized for his condition in May. Claimant was in a coma for fifteen days and did not awake from it until May 26, 2020.

On May 4, 2020, employer sent a letter to all its employees instructing them that they needed to return to work by May 18, 2020, or they would be terminated. Employer sent the letter to the claimant's last known address which is still his current address. Claimant denies getting the letter because he was in the hospital and because he was in a coma beginning on May 11, 2020. The claimant never had contact with the employer after his April 6th phone call to the phone line informing them of his symptoms. Claimant did not request a leave of absence from the employer while he had COVID-19 and while he was recovering from his illness.

Claimant recovered from his illness and was released back to work in August. On August 18, 2020, claimant returned to his employer prepared to work. When he arrived at work his supervisor instructed him to talk to Mr. Mc Garvey in Human Resources. Mr. Mc Garvey informed claimant he was terminated and that he could re-apply for his job six months after his termination. Claimant never re-applied for his job and he never filed a grievance with the union. Employer terminated claimant because he did not return to work on May 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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 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. 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.

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 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 March 31, 2021, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

July 27, 2021
Decision Dated and Mailed

cs/scn

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.