

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AHMED M AHMED
Claimant

APPEAL NO: 21A-UI-17311-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 8, 2020, (reference 01) unemployment insurance decision that concluded he was disqualified from regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on October 1, 2021. The hearings for Appeals 21A-UI-17311-JC-T, 21A-UI-17312-JC-T, 21A-UI-17313-JC-T and 21A-UI-17314-JC-T were held together. The claimant participated personally and through an Arabic interpreter (Allen) with CTS Language Link. The employer participated through Vicky Matthias. Official notice of the administrative records was taken. Department Exhibit 1 (Claimant's appeal letter) was admitted into evidence.

ISSUES:

Is the appeal timely?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Did the claimant timely request a new assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant performed work on assignment at Oral-B in Iowa City from April 2019 until March 18, 2020.

The undisputed evidence is that claimant discontinued work after that date. When the claimant did not contact the Oral-B hotline each day to report his absences, employer concluded that claimant had voluntarily quit after three days of no call/no show (March 20, 21 and 22, 2020) based on its policy. Claimant stated he discontinued reporting to work because of fears associated with COVID-19. Claimant stated his concerns were related to his age and health conditions.

When claimant was hired, he was given training in English on company policies and rules, which included the "no call/no show" policy and also the employer's "reassignment policy", which required he contact the employer after an assignment ended to request a new

assignment. Claimant's primary language is Arabic and he does not read or write very much in English and denied knowledge of the policies. The employer stated claimant had twelve call outs between April 2019 and December 2019, which reflects he had some understanding that he was to notify the employer of absences. Claimant did not contact the employer to request a new assignment after Oral-B. He did contact the employer on June 29, 2020 to state he was having surgery and would not be returning to employment due to the COVID-19 pandemic. Continuing work was available through Oral-B or other assignments, had claimant requested.

Claimant did file an application for Pandemic Unemployment Assistance benefits (PUA) and the request was denied. See reference 02 decision/ Appeal 20A-DUA-00512-B2-T.

An initial decision dated September 8, 2020 was mailed to claimant's address of record, which stated he was disqualified from regular unemployment insurance benefits due to a finding that he voluntarily quit his employment with Remedy Intelligent Staffing Inc. Claimant did receive the decision within the appeal period and acknowledged while he relies upon friends or others to help translate, that he had the document translated for him before an appeal was filed ten months later on July 21, 2021 See Department Exhibit 1.

Claimant stated he did not try to file an appeal before that date. Claimant also had an unrelated unemployment hearing on October 27, 2020 (Appeal 20A-DUA-00512-B2-T) and could have addressed any questions through an interpreter at that time. Claimant's appeal was filed after he received overpayment decisions dated July 14 and 15, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not file a timely appeal.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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 recognizes the claimant has limited English proficiency. However, claimant acknowledged he did receive the decision when it was sent, had it translated and did not try to file an appeal at that time. He also had the opportunity to ask questions about the decision through an Arabic interpreter during the hearing for Appeal 20A-DUA-00512-B2-T on October 27, 2020. Even with a language barrier, claimant did not appeal his decision until approximately ten months after it was mailed to him. This is not a reasonable period of delay under the circumstances. Iowa Admin. Code r. 871-24.35(2)(c).

Further, the evidence presented does not support that claimant's delay in appealing *was 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 September 8, 2020 (reference 01) initial decision is AFFIRMED. The appeal was not timely filed and is dismissed.



Jennifer L. Beckman
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October 5, 2021
Decision Dated and Mailed

jlb/scn