

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CANDI J WENGER**  
Claimant

**ALS CORNER OIL CO**  
Employer

**APPEAL 21A-UI-04953-ML-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the July 21, 2020 (reference 01) unemployment insurance decision that found that the claimant was disqualified from receipt of benefits based upon her voluntarily leaving her employment without good cause. The parties were properly notified of the hearing. A telephone hearing was held on April 15, 2021. The claimant, Candi J. Wenger, participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**ISSUE:**

Did the claimant file a timely appeal?

**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 March 29, 2020. The claimant made weekly claims for the 15 consecutive weeks between March 29, 2020 and July 11, 2020. The claimant received \$269.00 in weekly regular state benefits for each of the 15 weeks between March 29, 2020 and July 11, 2020. The regular benefits totaled \$4,035.00.

Claimant participated in a fact-finding interview on or about July 16, 2020. A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on July 21, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 31, 2020. The decision included clear and concise instructions for filing an appeal. The claimant did not take the steps to file an appeal by the July 31, 2020 appeal deadline.

Claimant filed her appeal on February 9, 2021, via the online appeals website, after she received a notice of overpayment, dated February 2, 2021. Claimant appealed both the July 21, 2020, decision and the February 2, 2021, overpayment decision.

Claimant does not remember whether or not she received the July 21, 2020, unemployment insurance decision; however, claimant was aware that her application for regular unemployment insurance benefits had been denied following the fact-finding interview. According to claimant, the Iowa Workforce Development representative that conducted her fact-finding interview told her that her claim for regular unemployment insurance benefits was going to be denied, and that she should consider filing for Pandemic Unemployment Assistance (PUA) benefits. In light of this recommendation, claimant applied for and began receiving PUA benefits.

As mentioned, claimant was cognizant of the fact her claim for unemployment insurance benefits had been denied following the fact-finding interview. Claimant was cognizant of the fact her unemployment insurance benefits were discontinued following the July 16, 2020 fact-finding interview. Claimant made no attempt to contact Iowa Workforce Development regarding the denial, or the termination of her unemployment benefits, until she received notice of an overpayment on or about February 4, 2021. Claimant testified she was unaware of any mailing issues that would have delayed or prevented delivery of the July 21, 2020, decision. Claimant confirmed she received the February 2, 2021, notice of overpayment without issue.

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

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).

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

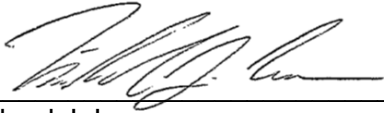
The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative 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 knew her claim for regular unemployment benefits was denied. Additionally, the appellant confirmed that she stopped receiving regular unemployment benefits after the fact-finding interview. The denial is ultimately what prompted claimant to apply for and receive PUA benefits. At no point between the fact-finding hearing and the February 2, 2021, overpayment decision, did the appellant contact IWD to inquire about the denial of her regular unemployment claim, or to inquire as to why her regular unemployment benefits ceased. It appears the only thing that prompted the appellant to contact IWD was the notification of an overpayment.

There is no evidence that claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service. Iowa Admin. Code r. 871-24.35(2). To the contrary, claimant testified she was unaware of any mailing issues that would have delayed or prevented delivery of the July 21, 2020, decision. As such, 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 July 21, 2020 (reference 01) decision is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.



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Michael J. Lunn  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

May 3, 2021  
Decision Dated and Mailed

mjl/kmj