

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COURTNEY L GAY

Claimant

APPEAL NO. 11A-UI-07173-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CLEAN MAIDS LLC

Employer

OC: 02/21/10

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.6- 2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 15, 2010, reference 02, that held she voluntarily quit without good cause attributable to the employer on August 20, 2010, and which denied unemployment insurance benefits. A hearing was held on June 22, 2011. The claimant participated. Trish Overbeck, manager, participated for the employer.

ISSUE:

The issue is whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant separated from employment with the employer on August 20, 2010. Claimant filed an additional unemployment claim effective August 22, 2010. The department issued a decision on September 15, 2010 that held claimant voluntarily quit without good cause attributable to the employer on August 20, 2010, and which denied unemployment benefits. Although claimant believes she attempted an appeal, Unemployment Appeals did not receive it. The reverse side of the decision provides the address and department name where to mail in an appeal.

Claimant went to her local workforce center to inquire about her appeal, and she learned that it had not been recorded by the department. The claimant did not attempt a further appeal at that time and she ceased her effort to claim benefits the week ending October 9, 2010/December 4, 2010. The claimant stated in this hearing that she gave up her effort to appeal.

Claimant filed a further unemployment claim effective May 8, 2011. The department issued a decision dated May 20, 2011 that denied benefits because the September 15, 2010 decision that disqualified her remains in force and effect. The claimant has not worked and earned wages to re-qualify for benefits since her August 20 employment separation. Claimant mailed her appeal to Unemployment Appeals that is postmarked May 27, 2011.

Although the record was held open to the close of the business day on June 22, claimant failed to submit evidence of her attempt to appeal within the ten-day period required by law.

The employer's tax account (#503865) lists the name "The Clean Maids LLC," and the employer representative states any reference to The Clean Maids at an address on 51st is erroneous.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes claimant failed to file a timely appeal.

While it is believable claimant made an effort to submit a timely appeal within the ten-day period required by law from the September 15, 2010 decision, she acquiesced in making any further reasonable effort to pursue it. Waiting eight months to file a new unemployment claim absent any further employment/earnings and then trying to go back to an old employment separation is not a reasonable effort to file a timely appeal. She knew when she ceased claiming benefits in 2010 the reason why, and she made a knowing decision not to pursue an appeal. Good cause for the appeal delay is not established.

DECISION:

The representative's decision dated September 15, 2010, reference 02, is affirmed. The claimant failed to file a timely appeal. Claimant voluntarily quit without good cause on August 20, 2010. Benefits are denied until she has re-qualified by earning wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw