

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN R TIGGES

Claimant

APPEAL NO. 24A-UI-04229-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEROY & SONS INC

Employer

OC: 01/07/24

Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal

Iowa Code § 96.5-1 – Voluntary Quit

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from the April 9, 2024 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on May 14, 2024. The claimant did participate. The employer did participate through Marilyn Vonnahme.

ISSUES:

Whether the appeal is timely?

Whether claimant quit for good cause attributable to employer?

Whether claimant is able and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on April 9, 2024. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 19, 2024. The appeal was not filed until April 29, 2024, which is after the date noticed on the disqualification decision. Claimant stated that he did not receive the decision.

Claimant worked as a seasonal worker for employer's business. He was laid off in early January and contacted on March 6, 2024 to come back to work on March 16, 2024. When claimant was contacted on March 6 he told employer that he put in an application for another job with Smitty B Honey closer to his home, but he didn't know if he was going to get that job. The employer indicated that he needed to know if claimant was going to come back to his job. As claimant did not commit to coming back to work for employer, the employer told claimant that his unemployment would be over with.

Claimant then contacted an IWD official. Claimant allegedly told him of the job offer and claimant's statement that he'd applied for another job. Claimant stated that he was told by the IWD official that he could go ahead and continue filing for benefits.

Claimant did not go back to work with Leroy & Sons and continued filing for unemployment through the end of March. Claimant then started to work for his new job at Smitty B Honey.

While claimant filed for unemployment, he was asked to work one day every three weeks for employer. Claimant was supposed to go in and work during the week ending March 9, 2024. After his discussion on the phone on March 6, 2024, claimant did not go in to work at all that week.

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 begin 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 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. 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 potentially due to an 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 is therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

The initial determination to be made is whether claimant is terminated or whether claimant quit. The judge finds that claimant quit his job as employer made a valid offer for reemployment to the claimant on March 6, 2024. Claimant turned down the offer on that date indicating that he could not commit as he had an application in at another job. Claimant did not indicate to employer when he would know if he'd been accepted or not for the other job. Employer was reasonable in seeing the lack of commitment towards his job as a quit.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

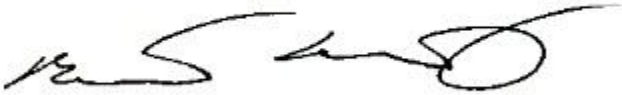
The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because he wanted to get a job that was closer to his home. Claimant's decision to take a job closer to his home is understandable, but is not for good cause attributable to employer.

As employer had work available for claimant on the week ending March 9, 2024 and claimant declined to do that work, it would be inappropriate to allow claimant to continue to receive unemployment benefits until the date of March 16, 2024 – the date when parties were to return to work on a full time basis. Claimant showed through his declination of work on March 6, 2024 that he no longer wished to work for employer as of that date, and therefore that is the date when benefits are to end.

Benefits are denied.

DECISION:

The April 9, 2024 (reference 01) decision is affirmed. Although the appeal in this case was deemed timely, the decision of the representative remains in effect as the claimant's quit is not for good cause attributable to employer.

A handwritten signature in black ink, appearing to read 'Blair Bennett', with a stylized flourish at the end.

Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

May 16, 2024
Decision Dated and Mailed

bab/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.