

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOMITILA REDONDO
Claimant

LABOR GUYS LLC
Employer

APPEAL 20A-UI-15186-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20
Claimant: Respondent (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.6-3 – Filing Appeals
871 IAC 24.28 – Voluntary quit
871 IAC 24.28(6-8) – Prior Adjudication

STATEMENT OF THE CASE:

The employer filed an appeal from the September 10, 2020 reference 01, decision that allowed benefits based upon an allowance decision in a prior benefit year for the same separation. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 22, 2021. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Juan Miranda, Human Resources Specialist.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-15185.S1 and 20A-UI-15186.S1 were heard at the same time.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the matter has been previously adjudicated.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The issue presented was resolved in a prior claim year (original claim date August 4, 2019) as the representative's decision dated August 30, 2019, reference 01.

On November 9, 2020, the employer was mailed a statement of charges for the third quarter of 2020. The document contained information that stated, "If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the date of the mailing of this statement." The employer appealed the statement of charges on November 17, 2020.

A decision was mailed to the parties' last known address of record on September 10, 2020. The decision was not received by the employer. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 20, 2020. The appeal was not filed until November 17, 2020, which is after the date noticed on the decision. The appeal to the third quarter statement of charges was considered to be an appeal of the September 10, 2020, representative's decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The employer did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer appealed the Statement of Charges and therefore, the appeal the appeal in this case shall be accepted as timely.

The next is whether the issue has been adjudicated in a prior claim year and that decision has become final.

Iowa Admin. Code r. 871-24.28(6) provides:

Voluntary quit requalification and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

871IAC 24.19(1) provides:

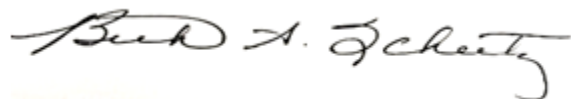
Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. . . . The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any other such party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

The issue presented was resolved in a prior claim year (original claim date August 4, 2019) as the representative's decision dated August 30, 2019, reference 01. The current decision referring to the prior claim year decision is affirmed.

The issue has been adjudicated in a prior claim year and that decision has become final. The separation has been previously adjudicated.

DECISION:

The August 30, 2019, reference 01, decision is affirmed. The appeal in this case was timely. The prior decision on the separation remains in effect.



Beth A. Scheetz
Administrative Law Judge

February 08, 2021
Decision Dated and Mailed

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