

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MARIA G GODINEZ ARROYO
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 23A-UI-02755-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/31/21
Claimant: Appellant (2)**

Iowa Code Section 96.5(1)(j) – Temporary Employment Separation
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On March 13, 2023, Maria Godinez Arroyo (claimant) filed a late appeal from the September 29, 2021 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit the employment on October 16, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 3, 2023. Claimant participated. Steve Volle represented the employer. There were three appeal numbers consolidated into a single appeal hearing: 23A-UI-02755-JT-T, 23A-UI-02756-JT-T, and 23A-UI-02757-JT-T. The claimant is a party in interest in all three appeal numbers. The employer is a party only to the first appeal number. Spanish-English interpreter Lil Rodriguez (#68060) of CTS Language Link assisted with the hearing. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the reference 01, 02 and 03 decisions, DBIN, KPYX, KCCO, KLOG, KFFV, and the IWD overpayment balance database. The administrative law judge left the hearing record open for the limited purposes of allowing the claimant the opportunity to submit a utility bill or similar document indicating she had at one time resided at 414 N. 13th Avenue in Marshalltown. The claimant submitted a 2021/2022 Marshall County Property Tax Statement, which was received into evidence as Exhibit B.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely. Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Maria Godinez Arroyo (claimant) established an original claim for benefits that was effective January 31, 2021. The claimant is a Spanish-speaking person and made her initial application

for benefits with the assistance of her adult bilingual son. At the time the claimant established her claim, the claimant provided an erroneous street number for the claimant. At the time, the claimant resided on 13th Avenue in Marshalltown, but erroneously provided a 12th Avenue address with the same house number, city name and zip code. The claimant continued to reside at the 13th Avenue residence until approximately April 2022. The claimant then moved to a different address on 13th Avenue in Marshalltown. The claimant did not contact Iowa Workforce Development to update her address when she moved. At the time of the move, the claimant had been in nonpayment status and had not filed weekly claims since the week that ended May 8, 2021. The claimant and her husband completed a change of address request with the United States Postal Service in connection with the move.

On September 29, 2021, Iowa Workforce Development mailed the September 29, 2021 (reference 01) decision to the address of record, the erroneous 12th Avenue address. The reference 01 decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit the employment on October 16, 2020 without good cause attributable to the employer. The reference 01 decision stated the decision would become final unless an appeal was postmarked by October 9, 2021 or was received by the Appeals Section by that date. The decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. October 9, 2021 was a Saturday and the next working day was Tuesday, October 12, 2021. The claimant did not receive the reference 01 disqualification decision and did not file an appeal by the October 12, 2021 extended appeal deadline.

On April 19, 2022, Iowa Workforce Development mailed the April 19, 2022 (reference 02) overpayment decision to the erroneous 12th Avenue address of record. The reference 02 decision held the claimant was overpaid \$6,123.54 in regular, PEUC, and FPUC unemployment insurance benefits, due to the reference 01 decision regarding a quit from Advance Services. The reference 02 decision stated the decision would become final unless an appeal was postmarked by April 29, 2022 or was received by the Appeals Section by that date. The claimant did not receive the reference 02 overpayment decision and did not file an appeal by the April 29, 2022 appeal deadline.

On March 9, 2023, Iowa Workforce Development mailed the March 9, 2023 (reference 03) tax offset decision to an updated address of record provided by the Iowa Department of Revenue. The claimant had provided the updated address in connection with filing her 2022 Iowa income tax return. The reference 03 tax offset decision included a March 19, 2023 deadline for appeal. The claimant learned about the reference 01 disqualification decision and the reference 02 overpayment decision after she received the March 9, 2023 tax offset decision.

On March 13, 2023, the claimant completed and transmitted an online appeal from the March 9, 2023 tax offset decision. The Appeals Bureau received the decision on March 13, 2023 and treated it as also an appeal from the reference 01 disqualification decision and the reference 02 overpayment decision. One of those periods of employment began

The claimant was employed by Advance Services, Inc., a temporary employment agency, during multiple distinct periods. One of those periods of employment began August 24, 2020, when the claimant commenced a full-time temporary work assignment at Pioneer Hybrid. Prior to commencing the assignment in August 2020, the claimant had last performed work for the employer from September 2019 to November 2019. The claimant completed the 2020 assignment on October 16, 2020, by which time she had completed all the work that Pioneer Hybrid had for her. An ASI representative notified the claimant the 2020 assignment was done. There was no discussion at that time about whether the claimant was interested in a new

assignment. The claimant's next contact with the employer occurred in September 2021, when the claimant commenced a new assignment.

In connection with the 2020 employment, the employer did not have the claimant sign a policy that would obligate the claimant to contact the employer at the end of the assignment to request a new assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. Nor had the employer had the claimant sign such a policy in connection with the 2019 employment. The employer may have had the claimant sign such a policy in connection with a 2018 assignment, but the claimant does not recall signing such a policy or receiving a copy of said policy.

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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date

entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes good cause to treat the late appeal from the reference 01 decision as a timely appeal. The claimant did not receive the reference 01 decision when it was mailed to her, did not have an opportunity to file an appeal by the appeal deadline, did not become aware of the decision until on or after March 9, 2023, and did not thereafter unreasonably delay filing the appeal. The administrative law judge has jurisdiction to enter a decision on the merits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.5(1)(j) 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. But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise

explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence in the record establishes an October 16, 2020 separation for good cause attributable to the temporary employment firm. In connection with the separate and distinct 2020 employment, the employer did not meet its obligation under Iowa Code section 96.5(1)(j) to place the claimant on notice of an obligation to contact the employer within three working days of completing an assignment to request a new assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. Because the employer failed to comply with the statute, subsection J does not apply to the claimant's 2020 employment. The claimant fulfilled her contract of hire as of October 16, 2020, when she completed all of the work the employer had for her in connection with the 2020 assignment. The claimant was not obligated to pursue a new assignment with the employer.

Based on the October 16, 2020 separation with good cause attributable to the employer, the claimant was eligible for benefits provided she was otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claimant's appeal from the September 29, 2021 (reference 01) decision was timely. The reference 01 decision is REVERSED. The claimant's October 16, 2020 separation from the temporary employment firm was for good cause attributable to the employer. The claimant was eligible for benefits provided she was otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive style and is positioned above a horizontal line.

James E. Timberland
Administrative Law Judge

April 12, 2023
Decision Dated and Mailed

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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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.

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 then file a petition for judicial review in district court.

2. If no one files 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 Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.

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 nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.