

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIGUEL DIAZ
Claimant

APPEAL NO. 15A-UI-06984-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC
Employer

OC: 01/04/15
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(j) – Voluntary Quit from Temporary Employment Agency
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Miguel Diaz filed an appeal from the May 21, 2015, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Diaz had voluntarily quit the employment effective April 24, 2015 by failing to contact the temporary employment agency within three working days of the end of his assignment after being told in writing of his obligation to do so. After due notice was issued, a hearing was held on July 22, 2015. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-06985-JTT. Mr. Diaz participated. Chris Grego, Staffing Specialist, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Department Exhibits D-1, D-2 and D-3 into evidence.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 21, 2015, Workforce Development mailed a copy of the May 21, 2015, reference 03, decision to Miguel Diaz at his last-known address of record in Marshalltown. The decision disqualified Mr. Diaz for benefits and relieved Manpower of liability for benefits, based on an Agency conclusion that Mr. Diaz had voluntarily quit the employment effective April 24, 2015 by failing to contact Manpower within three working days of the end of his assignment after being told in writing of his obligation to do so. The decision contained a warning that an appeal from the decision must be postmarked by May 31, 2015 or be received by the Appeals Section by that date. Mr. Diaz received the decision on or about May 22 or 23, 2015. Mr. Diaz did not take any steps to appeal the decision by the appeal deadline.

On May 26, 2015, Workforce Development mailed a copy of the May 26, 2015, reference 04, decision to Mr. Diaz at his last-known address of record in Marshalltown. The decision stated that Mr. Diaz was overpaid \$1,230.00 in benefits for three weeks between April 26, 2015 and May 16, 2015, based on the earlier decision that disqualified him for benefits in connection with his separation from Manpower. The decision contained a warning that an appeal from the decision must be postmarked by June 5, 2015 or be received by the Appeals Section by that date. Mr. Diaz received the decision on or about May 27 or 28, 2015. Mr. Diaz did not take any steps to appeal the decision by the appeal deadline.

On June 16, 2015, Workforce Development mailed a demand letter, known as an Overpayment Statement, to Mr. Diaz at his last-known address of record in Marshalltown. The Overpayment Statement told Mr. Diaz that he must make arrangements to repay the \$1,230.00 overpayment. Mr. Diaz received the Overpayment Statement on June 17, 2015. On June 18, 2015, Mr. Diaz went to the Marshalltown Workforce Development Center and completed an appeal form. Mr. Diaz took the Overpayment Statement with him. On June 18, 2015, Mr. Diaz delivered his completed appeal form to the Workforce Development staff. The staff documented receipt of the appeal and faxed the appeal form and the Overpayment Statement to the Appeals Section. The Appeals Section received the appeal on June 18, 2015.

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 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, subsection 10, 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 871 AC 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 871 IAC 24.35(1)(b).

Mr. Diaz's appeal from both decisions was filed on June 18, 2015, the day on which Mr. Diaz hand delivered the appeal to the Marshalltown Workforce Development Center and the day that the Appeals Section received the appeal by fax.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the May 21, 2015, reference 03, decision and the date that Mr. Diaz filed his appeal. 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 Mr. Diaz did have a reasonable opportunity to file a timely appeal.

Mr. Diaz's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or any delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the decision from which Mr. Diaz appeals. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant appeal from the May 21, 2015, reference 03, decision was untimely. The decision is affirmed. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on April 24, 2015 separation remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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