

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAILY, KATHERINE, M
Claimant

APPEAL NO. 11A-UI-04217-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK SHOP INC
Employer

**OC: 11/28/10
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) - Voluntary Quit
Iowa Code Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 11, 2011, reference 02 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 26, 2011. Claimant participated. Judy Spalding represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-UI-04218-JTT. Department Exhibits D-1, D-2, and D-3 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant's appeal from the February 11, 2011, reference 02, decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 11, 2011, Iowa Workforce Development mailed a copy of the February 11, 2011, reference 02, decision to Katherine Daily's last-known address of record. Ms. Daily received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 21, 2011. After the appeal deadline, Ms. Daily contacted a Workforce Development representative, who discussed with Ms. Daily her chances for success on appeal. Ms. Daily elected not to go forward with an appeal of the disqualification decision. On March 25, 2011, Workforce Development mailed an overpayment decision to Ms. Daily. That decision said Ms. Daily was overpaid unemployment insurance benefits totaling \$1,730.00. In response to receiving the overpayment decision, Ms. Daily drafted an appeal on March 30, 2011. Ms. Daily mailed the appeal. The appeal was postmarked on March 31, 2011. When the Appeals Section received the appeal from the overpayment decision, the Appeals Section treated the appeal as an appeal also from the earlier disqualification 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, 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).

The appeal in this matter was filed on March 31, 2011, the date that appears as the postmark on the envelope in which the appeal was mailed.

The evidence in the record establishes that more than ten calendar days elapsed between the date the February 11, 2011, reference 02 decision was mailed to the claimant and the date the claimant filed her 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 the appellant did have a reasonable opportunity to file a timely appeal from the February 11, 2011, reference 02 decision that disqualified her for benefits.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The evidence establishes that any contact between Ms. Daily and Workforce Development about filing an appeal occurred after the February 21, 2011 deadline for filing an appeal from the February 11, 2011, reference 02 decision. The administrative law judge finds not credible Ms. Daily's assertion that a Workforce Development representative told her there was no point in filing a an appeal or otherwise dissuaded her from filing an appeal.

The administrative law judge concludes that the appeal from the February 11, 2011, reference 02 disqualification decision was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks 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).

DECISION:

The Agency representative's February 11, 2011, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative that disqualified the claimant for unemployment insurance benefits remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css