

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAMIEN YOUNGREN**  
Claimant

**BENTLEY RIDGE TREE FARM LLC**  
Employer

**APPEAL 19A-UI-08026-AW**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/11/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – VQ – Voluntary quit  
Iowa Code § 96.6(2) – Filing – Timely Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the September 23, 2019 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A hearing was held in Des Moines, Iowa on November 5, 2019, at 11:00 a.m. Claimant participated. Employer participated through Andrea Gnat, Assistant Controller. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether claimant filed a timely appeal.  
Whether claimant voluntarily quit without good cause attributable to employer.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 6901 SE 14th Street, Lot 139, Des Moines, Iowa on September 23, 2019. That was claimant's correct address on that date. Claimant received the decision on September 28, 2019.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 3, 2019. Claimant appealed the decision online on October 14, 2019. Claimant's appeal was received by Iowa Workforce Development on October 14, 2019. Claimant did not submit his appeal prior to the due date because he had no intention of appealing as he had begun new employment. Claimant then received an unemployment insurance decision stating he was overpaid benefits and would be required to repay those benefits. Upon receiving the overpayment decision, claimant submitted this appeal. Claimant provided no other reason for his delay in submitting his appeal.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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.

Claimant received the decision five days before the due date. Claimant submitted his appeal more than ten days after the due date. Claimant decided to appeal this decision when he learned that he would be required to repay benefits he received. Claimant's delay in appealing was not due to any agency error or misinformation or delay of the United States Postal Service. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The September 23, 2019 (reference 03) unemployment insurance decision is affirmed.

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Adrienne C. Williamson  
Administrative Law Judge  
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Decision Dated and Mailed

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