

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**AARON INGRASSIA**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 21A-UI-04652-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**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 a late appeal from the January 12, 2021, reference 04, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 15, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 9, 2021. The claimant participated. The employer did not provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the January 12, 2021, reference 04, decision and received Exhibit A into evidence.

**ISSUES:**

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 December 16 and 18, 2020, an Iowa Workforce Development Benefits Bureau deputy attempted to contact the claimant by telephone for the purpose of conducting a cold-call fact-finding interview concerning the claimant's separation from Hy-Vee. The deputy made the first attempt on the afternoon of December 16 and made the second attempt mid-morning on December 18, 2020. In both instances, the claimant did not answer and the deputy could not leave a voicemail message because the claimant's voicemail was full. The deputy sent emails to the claimant to solicit information to be considered in making a decision regarding the separation, but did not receive a response from the claimant.

On January 8, 2021, the claimant left for a three-week vacation in California. The claimant returned home on January 29, 2021. The claimant lives alone. The claimant had not made arrangements to forward his mail. The claimant had not made arrangements for anyone to collect his mail and alert him to time-sensitive correspondence.

On January 12, 2021, Iowa Workforce Development mailed the January 12, 2021, reference 04 decision to the claimant's Eldora last-known address of record. The decision disqualified the

claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 15, 2020 without good cause attributable to the employer. The decision stated that the decision would become final unless an appeal was postmarked by January 22, 2021 or was received by the Appeals Section by that date. The decision arrived at the claimant's address of record in a timely manner, prior to the deadline for appeal.

The claimant discovered the decision in his accumulated mail upon his return home. On February 2, 2021, the claimant drafted an appeal. The claimant mailed the appeal. The correspondence was postmarked February 2, 2021.

## **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). 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 evidence in the record establishes an untimely appeal. The claimant made himself unavailable to participate in the fact-finding interview process not answering the deputy's phone calls, by not managing his voice mailbox so he could receive voicemail, and by not responding to the deputy's emails. The claimant similarly made himself unavailable to participate in the appeal process in a timely manner by going on a three-week vacation without making reasonable and appropriate arrangements to address time-sensitive correspondence during his absence. The claimant did these things at a time when he knew or should have known that his eligibility for unemployment insurance benefits was being determined. The claimant made himself unavailable to receive the decision or to file an appeal by the January 22, 2021 appeal deadline. Even after the claimant got home on January 29, 2021, he delayed filing the appeal another four days despite knowing the appeal was late. The late filing of the appeal was attributable to decisions the claimant made and was not attributable to Iowa Workforce Development or the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(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 reference 04 decision. 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's appeal was untimely. The January 12, 2021, reference 04, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 15, 2020 without good cause attributable to the employer, remains in effect.



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James E. Timberland  
Administrative Law Judge

April 28, 2021  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you may be required to repay the benefits you have received.**