

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KARKADE B KHALIFA
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 21A-UI-24443-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/07/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant, Karkade Khalifa, filed a late appeal from the October 1, 2020, reference 01, 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 voluntary quit employment with Swift Pork Company/JBS on May 28, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 3, 2022. There were three appeal numbers set for a consolidated hearing: 21A-UI-24443-JTT, 21A-UI-24444-JTT, and 21A-UI-24445-JTT. The claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the appeal hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01, 02 and 03 decision, DBRO, KPYX and KCCO.

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:

Karkade Khalifa is the claimant in this matter. Mr. Khalifa is 70 years old. Mr. Khalifa's native language is Kunama. Mr. Khalifa does not read or speak English. Mr. Khalifa advises that he usually has ready access to other individuals who are able to assist him with understanding documents written in English.

Mr. Khalifa was employed by Swift Pork Company, otherwise known as JBS, as a full-time production worker from 2018 until he separated from that employer in 2020. The workplace was in Marshalltown. The claimant has at all relevant times resided in Des Moines. The claimant is unable to recall the specific start date of the employment or the last date he performed work for JBS. Iowa Workforce Development records indicate the employment began in 2018 and that the claimant last performed work for JBS on May 26, 2020. See DBRO. The claimant's work hours were 6:00 a.m. to 3:00 or 3:30 p.m., Monday through Friday. When the claimant went off

work in May 2020, it was pursuant to a temporary layoff initiated by the employer. The temporary layoff occurred in the context of the COVID-19 pandemic. It was the claimant's understanding that the employer wished him to be away from the workplace due to his advanced age. The claimant did not wish to be off work. The claimant promptly sought and accepted new full-time employment with Loffredo Gardens, Inc. in Des Moines. Though the new employment paid significantly less, the Loffredo Gardens workplace was much nearer to the claimant's home. About a week after JBS temporarily laid off the claimant, JBS recalled the claimant to the employment. The claimant declined to return to the JBS employment because he had begun working for Loffredo.

With assistance, the claimant established an original claim for unemployment insurance benefits that was effective June 7, 2020. The claimant denies that he had a hand in setting up the unemployment insurance claim, but the weight of the evidence indicates otherwise. Whoever assisted the claimant with setting up the claim provided all of the necessary personal identification information to set up the claim, including the claimant's correct address of record, including the correct apartment number, the claimant's date of birth, and the claimant's Social Security number. The address of record was an apartment located on Pennsylvania Avenue in Des Moines, where the claimant resided with family members. The claimant requested that federal and state taxes be withheld from benefits.

Iowa Workforce Development set the weekly benefit amount for regular benefits at \$545.00. On June 22, 2020, Iowa Workforce Development disbursed \$1,090.00 in regular benefits to the claimant via the debit card issued to the claimant. The net payment was \$926.50. On June 23, 2020, Iowa Workforce Development disbursed \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits to the claimant via the debit card issued to the claimant. The net payment was \$1,020.00. The appropriate income tax withholding information was sent to the appropriate taxing authorities. The claimant denies that he received a debit card or that he used money disbursed via the debit card.

On October 1, 2020, Iowa Workforce Development Benefits Bureau mailed the October 1, 2020, reference 01, decision to the claimant's last-known address of record. 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 that the claimant voluntary quit employment with Swift Pork Company/JBS on May 28, 2020 without good cause attributable to the employer. The weight of the evidence indicates the decision was delivered to the address of record in a timely manner, prior to the deadline for appeal. The decision stated that the decision would become final unless an appeal was postmarked by October 11, 2020 or was received by the Appeals Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. October 11, 2020 was the Sunday before the Columbus Day legal federal holiday. The next working day was October 13, 2020. The claimant did not file an appeal by October 13, 2020 or at any time prior to November 1, 2021.

In May 2021, the claimant moved from the residence on Pennsylvania Avenue to a residence on East 5th Street in Des Moines. The claimant did not update his address of record with Iowa Workforce Development.

On August 26, 2021, Iowa Workforce Development mailed two overpayment decisions, reference 01 and 02, to the claimant's last-known address of record on Pennsylvania Avenue in Des Moines. The reference 02 decision held the claimant was overpaid \$1,090.00 in regular benefits for the two weeks between June 7, 2020 and June 20, 2020, due to the earlier decision that disqualified the claimant for benefits based on his voluntary quit from JBS. The

reference 02 decision held the claimant was overpaid \$1,200.00 in FPUC benefits for the same two weeks due to the earlier decision that disqualified the claimant for benefits based on his voluntary quit from JBS. Each decision stated the decision would become final unless an appeal was postmarked by September 5, 2021 or was received by the Appeals Section by that date. Each decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. September 5, 2021 was the Sunday before Labor Day, a legal holiday, and the next working day was September 7, 2021. The claimant asserts he did not receive the reference 02 or 03 overpayment decisions. However, the weight of the evidence indicates the decisions were delivered to the address of record in a timely manner, prior to the deadline for appeal. The claimant did not file an appeal from either overpayment decision by the September 7, 2021 effective deadline or at any time prior to November 1, 2021.

With assistance, the claimant completed and transmitted a cursory online appeal on November 1, 2021. The claimant asserted in the appeal that he never applied for unemployment insurance benefits and had not received any benefits. The claimant advises that he filed his appeal in response to receiving a repayment demand letter sent directly to his new address on East 5th Street. The Appeals Bureau received the appeal on November 1, 2021 and treated it as an appeal from the overpayment decisions and 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, 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).

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 weight of the evidence establishes that each of the decisions was delivered to the address of record in a timely manner prior to the deadline for appeal, that the claimant had a reasonable opportunity to file an appeal by the applicable deadline with assistance from a friend, and that the claimant unreasonably delayed filing the appeal until November 1, 2021. Because the delay in filing the appeal was not attributable to Iowa Workforce Development error or misinformation or delay or other action of 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 untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the claimant 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's appeal from the October 1, 2020, reference 01, decision is untimely. The representative's the decision remains in effect.

This matter is remanded to the Investigations & Recovery Unit for further action as the Unit deems appropriate, if any.



James E. Timberland
Administrative Law Judge

January 27, 2022
Decision Dated and Mailed

jet/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.