

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PAUL MATYKOWSKI
Claimant

BERNIE 2020 INC
Employer

APPEAL NO. 20A-UI-3704-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Paul Matykowski filed an appeal in an unrelated matter that the Appeals Bureau also treated as a late appeal from the April 13, 2020, reference 01, decision that disqualified Mr. Matykowski for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Matykowski voluntarily quit on January 1, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 21, 2020. Mr. Matykowski participated. The employer did not provide a telephone number for the appeal hearing and did not participate. The administrative law judge took official notice of the April 13, 2020, reference 01, decision and received Exhibit A into evidence.

ISSUE:

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 April 13, 2020, Iowa Workforce Development mailed the April 13, 2020, reference 01, decision to Paul Matykowski at his last known address of record. The decision disqualified Mr. Matykowski for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Matykowski voluntarily quit on January 1, 2020 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by April 23, 2020 or be received by the Appeal Section by that date. Mr. Matykowski received the decision in a timely manner, prior to the appeal deadline, but elected not to file an appeal from the decision. On April 30, 2020, Mr. Matykowski mailed an appeal to the Appeals Bureau concerning his separation from a different employer. The appeal envelope is postmarked April 30, 2020. The Appeals Bureau docketed an appeal in that other matter, but then also erroneously docketed an appeal from the April 13, 2020, reference 01, decision at issue in this matter.

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.

While it would not be inappropriate to dismiss the appeal as an erroneously docketed appeal, the administrative law judge will consider the timeliness of the appeal in connection with Mr. Matykowski's request to proceed with the hearing.

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 appeal that the Appeals Bureau erroneously docketed in this matter was filed on April 30, 2020, which is the postmark date on the envelope in which the appeal was mailed.

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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The evidence in the record establishes an untimely appeal as it relates to appeal of the April 13, 2020, reference 01, decision. The appeal, to the extent there was one, was filed a week after it was due. The delay in filing the appeal was attributable to Mr. Matykowski's earlier decision not to file an appeal in this matter. The delay in filing the appeal was not attributable to Iowa Workforce Development or to the United States Postal Service. Accordingly, 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 further lacks jurisdiction to disturb the April 13, 2020, reference 01, 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 April 13, 2020, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on January 1, 2020 without good cause attributable to the employer, remains in effect.

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 due to disqualifying separations, but who are currently 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>.



James E. Timberland
Administrative Law Judge

May 29, 2020
Decision Dated and Mailed

jet/scn