

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DOMITILA REDONDO**  
Claimant

**LABOR GUYS LLC**  
Employer

**APPEAL 20A-UI-15185-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/04/19  
Claimant: Respondent (1)**

---

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.5-1-j – Separation from Temporary Employer  
Iowa Code § 96.3-7 – Overpayment  
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation  
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

**STATEMENT OF THE CASE:**

Labor Guys (employer) appealed a representative's August 30, 2019, decision (reference 01) that concluded Domitila Redondo (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 22, 2021. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Juan Miranda, Human Resources Specialist.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-15185.S1 and 20A-UI-15186.S1 were heard at the same time.

**ISSUE:**

The issue is whether the employer's protest is timely, its protest of the statement of charges is timely, and its appeal is timely and, if so, whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from May 22, 2017, through August 9, 2019, at PAE as a full-time material handler. She signed a document on May 18, 2017, indicating she was to contact the employer every day at its office between 7:00 and 8:00 a.m. following the completion of an assignment to request placement in a new assignment. If she did not do this for three days, the employer would consider her to have quit work under a three day no call, no show policy. The employer was uncertain whether it gave the claimant a copy of the document, which was not separate from the contract for hire. The claimant completed her last assignment on August 9, 2019, but did not seek reassignment from the employer.

The claimant's notice of claim was mailed to the employer's address of record on August 13, 2019, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer protested on August 16, 2019, which is within the ten-day period.

The agency held a fact-finding interview on August 29, 2019. The claimant and the employer participated personally. A decision was mailed to the parties' last known address of record on August 30, 2019. The decision was not received by the employer. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 9, 2019.

On August 7, 2020, the employer was mailed a statement of charges for the second quarter of 2020. The document contained information that stated, "If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the date of the mailing of this statement." The employer did not appeal the statement of charges.

On November 9, 2020, the employer was mailed a statement of charges for the third quarter of 2020. The document contained information that stated, "If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the date of the mailing of this statement." The employer appealed the statement of charges on November 17, 2020. The appeal was considered to be an appeal of the August 29, 2019, representative's 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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

The record in this case shows 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 employer did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer's first notice of the decision was the August 7, 2020, Statement of Charges. The employer did not file an appeal at that time. It waited until it received the November 9, 2020, Statement of Charges, three months later. No good cause was offered by the employer for the delay. Therefore, the appeal shall be considered untimely.

The administrative law judge concludes that the failure to file a timely appeal after receiving notice of the decision was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 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).

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to

read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

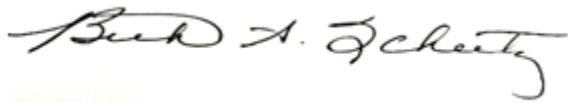
(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Under the Iowa Code the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the agreement or contract for hire. In this case, the employer did not notify the claimant of the three-working-day requirement. It created additional daily requirements not in the Code. The employer's notice was part of the contract for hire. These additional obligations imposed on the claimant are not supported by the Iowa Code. The employer did not provide the claimant with the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j.

**DECISION:**

The August 30, 2019, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed provided the claimant is otherwise eligible.



---

Beth A. Scheetz  
Administrative Law Judge

---

February 08, 2021  
Decision Dated and Mailed

bas/ol