

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANGELINA PEREZ
Claimant

ELDERBRIDGE AGENCY ON AGING
Employer

APPEAL NO. 20A-UI-14265-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a late appeal from the June 18, 2020 (reference 01) 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 November 15, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 8, 2021. Claimant, Angelina Perez, participated. Roxanne Thompson represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 20A-UI-14266-JTT and 20A-UI-14267-JTT. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KFFV, NMRO, the PUA & ID Verification Lookup database, the DUA Management database, and the monetary determination mailed to the claimant on April 9, 2020.

ISSUE:

Whether there is good cause to treat the late appeal from the June 18, 2020 (reference 01) decision as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for state benefits that was effective April 5, 2020. In the monetary determination (green paper) Iowa Workforce Development mailed to the claimant on April 9, 2020, IWD set the weekly benefit amount for regular state benefits at \$500.00. Nothing on that monetary determination instructed the claimant to ignore the employer information on the monetary record. The claimant made weekly claims for each of the 11 weeks between April 5, 2020 and June 20, 2020. For each of the nine weeks between April 5, 2020 and June 6, 2020, IWD paid the claimant \$500.00 in regular state unemployment insurance benefits. The state benefits totaled \$4,500.00. For each of the same nine weeks, IWD paid the claimant \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits. The FPUC benefits totaled \$5,400.00. IWD records reflect that the claimant has not yet filed an application

for Pandemic Unemployment Assistance (PUA) benefits. Nor has a decision been made regarding the claimant's eligibility for PUA.

On June 18, 2020, Iowa Workforce Development mailed the June 18, 2020 (reference 01) decision to the claimant at her Mason City last-known address of record. The reference 01 decision disqualified the claimant for benefits and stated the employer account of Elderbridge Agency on Aging would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on November 15, 2019 without good cause attributable to the employer. The reference 01 decision stated: "If this decision denies benefits and it is not reversed on appeal, it may result in an overpayment which you will be required to repay." The reference 01 decision stated that it would become final unless an appeal was postmarked by June 28, 2020 or was received by the Appeal Section by that date. The decision also stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. June 28, 2020 was a Sunday and the next working day was Monday, June 29, 2020. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal, but took no steps to file an appeal from the decision by the appeal deadlines or for months beyond the appeal deadline.

On October 27, 2020, IWD mailed a reference 02 overpayment decision to the claimant. The reference 02 decision stated that the claimant had been overpaid \$4,500.00 in benefits for nine weeks between April 5, 2020 and June 6, 2020, based on the earlier decision that disqualified the claimant for benefits in connection with her voluntary quit from Elderbridge Agency on Aging.

On October 30, 2020, IWD mailed a reference 03 overpayment decision to the claimant. The reference 03 decision stated that the claimant had been overpaid \$5,400.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the nine weeks ending June 6, 2020, based on the reference 01 decision regarding the claimant's voluntary quit from Elderbridge Agency on Aging.

On November 3, 2020, the claimant completed and transmitted an online appeal from the reference 02 overpayment decision. The Appeals Bureau received the decision on November 3, 2020 and treated it as also an appeal from the June 18, 2020 (reference 01) disqualification decision and the October 30, 2020 (reference 03) FPUC overpayment 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).

The evidence in the record establishes that the appeal from the June 18, 2020 (reference 01) disqualification decision was an untimely appeal. The claimant received the decision in a timely manner and had a reasonable opportunity to file an appeal by the appeal deadline. The claimant delayed filing the appeal for more than four months until November 3, 2020, after she received the overpayment decisions. 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). Because the late filing of the appeal was attributable to the claimant, and not attributable to IWD or to the United States Postal Service, there is not good cause under the law to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal from the June 18, 2020 (reference 01) decision was untimely, the administrative law judge lacks jurisdiction to disturb

that 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 from the June 18, 2020 (reference 01) decision 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 November 15, 2019 without good cause attributable to the employer, remains in effect.



James E. Timberland
Administrative Law Judge

January 26, 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, you will be required to repay the benefits you have received.**