

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KAYON MACKEY

Claimant

APPEAL NO. 20A-UI-03802-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DB&J ENTERPRISES INC

Employer

OC: 03/01/20

Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal

Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 20, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 27, 2020. The claimant did participate. The employer did participate through Alison McAninch.

ISSUES:

Whether the appeal is timely?

Whether claimant voluntarily quit with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on March 20, 2020. Claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 30, 2020. The appeal was not filed until May 7, 2020, which is after the date noticed on the disqualification decision.

Claimant stated he did not receive the decision in this matter although he normally receives the mail. He further stated that he thought he was receiving benefits as he'd received his debit card, but the benefits did not come so he checked and found his claim had been disallowed. He then filed his appeal.

Employer stated that claimant voluntarily quit on March 4, 2020. He did not work his scheduled shifts on March 5 or 6, 2020. Claimant allegedly came back into work on March 9 and asked to be allowed to come into work. Employer obliged.

Employer stated that claimant had always worked as a part time employee, working between 25-35 hours a week and these hours were consistent.

Claimant stated that he never quit and that he was given reduced hours. Claimant could not explain why he did not work on March 5 or 6 when he normally worked Monday through Friday.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin 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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 record shows that the appellant did not have a reasonable opportunity to file a timely appeal as he did not receive the decision.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains 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) provides:

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

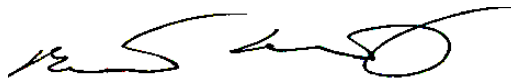
1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In this matter, the testimony indicates that claimant did decide to quit and file an unemployment claim only to reverse his decision and go back to work a few days later. Claimant had been and continued to be a part-time worker as all non-management employees were part-time workers. Claimant gave no reason for the quit as he says it didn't happen, but his not working the next few days indicates a quit did occur.

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 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>.

DECISION:

The March 20, 2020, reference 01, decision is affirmed. Although the appeal in this case was timely, the decision of the representative remains in effect. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

May 29, 2020
Decision Dated and Mailed

bab/scn