

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WADE G NELSON

Claimant

QPS EMPLOYMENT GROUP INC

Employer

APPEAL 20A-UI-10758-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(2) – Discharge for Misconduct

Iowa Code § 96.5(1)j – Timely Request for Another Job Assignment

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant Wade Nelson filed an appeal from an August 20, 2020 (reference 01) unemployment insurance decision that found that he was not eligible for unemployment insurance benefits based upon him voluntarily quitting work without good cause attributable to the employer. A telephone hearing was scheduled for October 21, 2020. The parties were properly notified of the hearing. Wade Nelson appeared and testified. Don Nelson represented Wade Nelson and also testified. Mai Lor and Brittaney Parks appeared on behalf of the employer. Exhibit 1 was admitted into the record. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

A decision that disqualified Wade Nelson from receiving unemployment insurance benefits was mailed to Wade Nelson's correct address of record on August 20, 2020. Wade Nelson and his parents went on vacation on or about August 27, 2020, and returned on September 3, 2020. After returning from vacation, Wade Nelson checked the post office box and found the August 20, 2020 decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 30, 2020, a Sunday. The decision notified Wade Nelson that if the deadline fell on a Sunday, the period was extended to the next working day, which was Monday, August 31, 2020. Wade Nelson filed his appeal electronically on September 4, 2020. Wade Nelson did not check the post office box before he left for a family vacation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is untimely.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

(emphasis added).

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. Bd. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 Iowa Administrative Code 24.35(2). As such, the

appeal was not timely filed pursuant to Iowa Code section 96.6(2) and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee*, 276 N.W.2d at 377; *Franklin*, 277 N.W.2d at 881.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 20, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Pandemic Unemployment Assistance (“PUA”) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (“PUA”) that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation (“FPUC”) program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ended as of July 25th in Iowa. This means the \$600 weekly additional benefit stopped and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and 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 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>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

October 23, 2020
Decision Dated and Mailed

hlp/sam