

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

UBALDO PEDRAZA
Claimant

WALMART INC
Employer

APPEAL NO. 21A-UI-06459-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
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 July 28, 2020 (reference 01) decision that disqualified him for benefits and that held the employer account of Walmart, Inc. would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on December 7, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 10, 2021. The claimant participated. The employer provided written notice that it waived participation in the hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-06460-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: The reference 01 through reference 04 decisions, NMRO, DBRO the application for PUA, the Assessment for PUA Benefits, the administrative law judge decision in Appeal Number 20A-DUA-00712-B2-T, the Employment Appeal Board decision in Hearing Number 21B-DUA-00712.

ISSUE:

Whether the appeal was timely. 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: The claimant was employed by Walmart, Inc. as a part-time stocker from August 2019 until December 7, 2019, when he voluntarily quit the part-time employment and full-time job with Wilson Trailer Company to relocate to Pharr, Texas. The claimant moved to Texas in December 2019 and commenced living at the residence where the claimant continues to reside.

The claimant established an original claim for regular unemployment insurance benefits that was effective March 22, 2020. The claimant was from the start interested in pursuing Pandemic Unemployment Assistance benefits (PUA) and was well aware that neither Walmart nor Wilson Trailer had caused him to become unemployed.

The claimant is a native Spanish speaker, but has substantial English language skills.

On July 28, 2020, Iowa Workforce Development mailed the July 28, 2020 (reference 01) decision to the claimant's Pharr, Texas last-known address of record. The reference 01 decision disqualified the claimant for benefits and held the employer's account of Walmart, Inc. would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on December 7, 2019 without good cause attributable to the employer. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by August 7, 2020 or was received by the Appeals Section by that date. The decision included clear and concise instructions for filing an appeal and did so in both English and in Spanish. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal, but did not file an appeal by the appeal deadline.

On July 31, 2020 claimant applied online for Pandemic Unemployment Assistance (PUA) benefits.

While the claimant states he received the July 28, 2020 (reference 01) decision before he applied for PUA benefits, he likely received the reference 01 decision shortly after he applied for PUA benefits. In any event, the claimant did not takes steps to file an appeal from the reference 01 decision by the August 7, 2020 deadline for appeal.

On October 6, 2020, the Benefits Bureau mailed an Assessment for PUA Eligibility that denied PUA benefits. The claimant filed a timely appeal from the October 6, 2020 Assessment for PUA Eligibility.

On October 12, 2020, Iowa Workforce Development mailed the October 12, 2020 (reference 02) decision to the claimant's Pharr, Texas address of record. The reference 02 decision disqualified the claimant for benefits, based on the deputy's conclusion that the claimant voluntarily quit his employment with Wilson Trailer Company on December 7, 2019 without good cause attributable to that employer. The claimant received the decision in a timely manner, but did not file an appeal from the decision by the October 22, 2020 deadline or at any other time.

On October 15, 2020, the claimant filed an appeal from the decision denying PUA benefits. On November 30, 2020, the claimant participated in an appeal hearing regarding his PUA benefit eligibility. On December 7, 2020, the administrative law judge's decision affirming the denial of PUA benefits was mailed to the claimant. On December 22, 2020, claimant filed a timely appeal from the administrative law judge decision that affirmed the denial of PUA benefits. On January 20, 2021, the Employment Appeal Board entered its decision reversing the PUA denial and authorized PUA benefits for the period beginning July 2, 2020.

On February 23, 2021, Iowa Workforce Development mailed the February 23, 2021 (reference 04) decision to the claimant's Pharr, Texas address. The claimant received the decision in a timely manner. The reference 04 decision held the claimant was overpaid \$8,500.00 in regular unemployment insurance benefits for 17 weeks between March 22, 2020 and July 18, 2020, based on the decision that disqualified the claimant for regular benefits in connection with his voluntary quit from Walmart. The reference 04 decision included a March 5, 2021 deadline for appeal.

On March 1, 2021, the claimant completed an online appeal from the reference 04 overpayment decision. The Appeals Bureau received the appeal on March 1, 2021 and treated it as also a late appeal from the June 28, 2020 (reference 01) 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).

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).

The claimant's appeal from the July 28, 2020, reference 01, decision was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the August 7, 2020 deadline, but did not file an appeal from the decision until March 1, 2021. 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 lacks jurisdiction to disturb the July 28, 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 claimant's appeal from the July 28, 2020, reference 01, decision was untimely. The decision that disqualified the claimant for benefits and that held the employer account of Walmart, Inc. would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on December 7, 2019 without good cause attributable to the employer, remains in effect.

As the claimant's eligibility for PUA benefits has already been adjudicated to a final agency decision, this decision includes no notice advising the claimant to apply for PUA benefits.



James E. Timberland
Administrative Law Judge

May 17, 2021
Decision Dated and Mailed

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