

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NIKIA K CRAINE
Claimant

APPEAL NO. 17A-UI-03655-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAWRENCE SERVICES CO
Employer

OC: 02/19/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Nikia Craine filed an appeal from the March 10, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Craine had voluntarily quit the employment on February 3, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 26, 2017. Ms. Craine participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A and Department Exhibit D-1 were received into evidence.

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: On March 10, 2017, Iowa Workforce Development mailed the March 10, 2017, reference 01, to Nikia Craine at her last-known address or record. The decision disqualified Ms. Craine for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Craine had voluntarily quit the employment on February 3, 2017 without good cause attributable to the employer. The decision stated that appeal from the decision must be postmarked by March 20, 2017 or received by the Appeals Bureau by that date. The decision provided a customer service telephone number Ms. Craine could call if she had questions about the decision. The backside of the decision contained clear and concise instructions for filing an appeal. Ms. Craine received the decision on or about March 15, 2017. Ms. Craine did not take any steps to appeal the decision by March 20, 2017 appeal deadline. On March 31, 2017, Ms. Craine contacted Workforce Development and spoke to an agency representative. Ms. Craine had by that time received another, unrelated decision that indicated she was eligible for benefits, provided she met all other eligibility requirements. On March 31, 2017, that agency representative explained to Ms. Craine that the disqualification decision would need to be appealed and reversed before Ms. Craine could meet the eligibility

requirements. On March 31, 2017, Ms. Craine accessed the agency's website and filed an online appeal. The Appeals Bureau received the appeal that same day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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, subsection 10, 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 871 AC 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 871 IAC 24.35(1)(b).

Ms. Craine's appeal was filed on March 31, 2017, when the Appeals Bureau received the online appeal Ms. Craine had submitted that same day.

The evidence in the record establishes that more than ten calendar days elapsed between the March 10 2017 mailing date of the decision and the March 31, 2017 filing of the appeal. 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 Ms. Craine did have a reasonable opportunity to file a timely appeal by the March 20, 2017 deadline. Ms. Craine delayed taking action on the matter until March 31, 2017. The lateness of the appeal was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Accordingly, there is not good cause under the law to treat the late appeal as a timely appeal. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the lower decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). The March 10, 2017, reference 01, decision that disqualified Ms. Craine for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Craine had voluntarily quit the employment on February 3, 2017 without good cause attributable to the employer, remains in effect

DECISION:

The March 10, 2017, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that the claimant voluntarily quit the employment on February 3, 2017 without good cause attributable to the employer, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs