

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATIE M SNOW**

Claimant

**APPEAL NO. 10A-UI-02790-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 02/02/10**

**Claimant: Appellant (2R)**

Section 96.5-1 – Voluntary Quit  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 2, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 1, 2010. Claimant participated. Employer participated by Scott McKenzie, Unemployment Coordinator. The record consists of the testimony of Katie Snow and the testimony of Scott McKenzie.

**ISSUE:**

Whether the claimant's appeal is timely; and

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

A representative's decision was issued on February 2, 2010, stating that the claimant was not eligible for unemployment insurance benefits. The decision also stated that any appeal had to be filed by February 12, 2010. The claimant was no longer living at the address to which the decision had been mailed. She had moved in January 2010. The claimant's mail was not forwarded to her in sufficient time to file a timely appeal. Her appeal was postmarked on February 19, 2010.

The employer is a staffing agency. The claimant began working for the employer in October 2007. She was assigned to a company called Syngenta. Her last day of actual work was December 30, 2009. She was off from December 31, 2009, through January 3, 2010. On January 4, 2010, she was admitted to the hospital for abdominal surgery. She was taken off work completely until released on February 8, 2010, by her treating physician. While the claimant was recovering from surgery, her assignment at Syngenta ended due to lack of work. The assignment ended on January 13, 2010.

## REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 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 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 an appeal postmarked as timely.

The administrative law judge concludes that failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The claimant had moved and filed a change of address with the postal service. She did not receive the decision denying her benefits until after the due date. She promptly filed her appeal, which was postmarked on February 19, 2010. Given the fact that the claimant did not have a reasonable opportunity to file a timely appeal, her appeal will be considered timely.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in this case established that the claimant did not voluntarily quit her job on January 12, 2010. The claimant was notified on January 13, 2010, that her assignment had ended. The claimant, however, had been hospitalized on January 4, 2010, for major surgery and was not released to return to work until February 8, 2010. Under these circumstances the administrative law judge concludes that there was no voluntarily quit.

This evidence does raise the question, however, of whether the claimant was able and available for work when she filed her original claim with a date of January 10, 2010. The administrative law judge informed the claimant that able and available was not listed as an issue but that she could waive notice and that issue could be addressed in this decision. The claimant did not waive notice and the parties were informed that the able and available issue would be remanded to the Claims Section.

**DECISION:**

The decision of the representative dated February 10, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. The issue of whether the claimant was able and available for work is remanded to the Claims Section.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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