

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOSEPH A SCHAFFER
Claimant

APPEAL NO. 18A-UI-07809-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC
Employer

OC: 06/17/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Joseph Schaffer filed an appeal from the July 5, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Schaffer voluntarily quit on May 31, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 13, 2018. Mr. Schaffer participated. Amanda Lange of Equifax represented the employer and presented testimony through Anthony Smith. Exhibits 1 and A and Department Exhibits D-1 through D-3 were received into evidence.

ISSUES:

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: During the week of June 17-23, 2018, claimant Joseph Schaffer made his initial application for unemployment insurance benefits to establish an original claim that Iowa Workforce Development deemed effective Sunday, June 17, 2018. Mr. Schaffer provided a Davenport address as the address to which Iowa Workforce Development should send correspondence concerning his claim. Mr. Schaffer provided the Davenport address even though he was about to move to Cowansville, Pennsylvania on June 20, 2018. On June 18, 2018, Mr. Schaffer provided the United States Postal Service with change of address information that included his new address in Pennsylvania. On June 20, 2018, Mr. Schaffer moved to Pennsylvania.

On July 5, 2018, Iowa Workforce Development mailed a copy of a July 5, 2018, reference 01, decision to Mr. Schaffer's last-known address of record, the address in Davenport. The decision disqualified Mr. Schaffer for unemployment insurance benefits, based on the Benefits Bureau deputy's conclusion that Mr. Schaffer voluntarily quit employment with AT&T Mobility Services, L.L.C. on May 31, 2018 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by July 15, 2018 or be received by the Appeal Section by that date. The decision also stated that if the appeal

deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. July 15, 2018 was a Sunday and the next working day was Monday, July 16, 2018. The reverse side of the decision provided a reminder of the appeal deadline and clear and concise instructions for filing an appeal online via the Agency's website, by fax, by e-mail, and by mail. Mr. Schaffer received the forwarded decision on July 13, 2018. Mr. Schaffer read the decision and noted the appeal deadline. Mr. Schaffer elected to defer action on the matter to a later date.

On July 23, 2018, the Appeals Bureau received an appeal that Mr. Schaffer had mailed from Pennsylvania. Prior to receipt of the mailed appeal, Mr. Schaffer had not provided Iowa Workforce Development with a mailing address other than the address of record in Davenport. The appeal correspondence from Mr. Schaffer included his copy of the July 5, 2018, reference 01, decision and an additional page that contained email correspondence dated May 25, 2018 and May 28, 2018, as well as *undated* handwritten notes Mr. Schaffer had added to the page. The postmark date on the envelope in which Mr. Schaffer mailed his appeal suffers from some legibility issues, but is most consistent with "19 JUL 2018 PM3 L." The Appeals Bureau representative who docketed the appeal reasonably concluded that the postmark date was the 19th of July 2018 and used that date to docket the appeal. Mr. Schaffer asserts that he wrote the his appeal on Monday, July 16, 2018 and that he placed the correspondence in a United States Post Office box on that day, albeit *after* the post office had closed for the day. Mr. Schaffer's assertion that he placed the correspondence in mailbox on July 16 is inconsistent with the postmark date information.

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 weight of 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 weight of the evidence establishes that the appeal was mailed and postmarked on July 19, 2018. Accordingly, the appeal is deemed filed July 19, 2018. Even if Mr. Schaffer's assertion that he placed the mail in the post office box on July 16, 2018 had been deemed reliable, Mr. Schaffer's testimony placed that act *after* the close of post office business on July 16, 2018, making the appeal late.

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 Mr. Schaffer 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 weight of the evidence the record shows that Mr. Schaffer did indeed have a reasonable opportunity to file a timely appeal by the extended July 16, 2018 deadline, but elected not to take timely action on the matter. Despite Mr. Schaffer's failure to update his address of record with Iowa Workforce Development, Mr. Schaffer received the July 5, 2018 decision on July 13, 2018, three days prior to the extended deadline for appeal. Mr. Schaffer reviewed the decision at that time, noted the appeal deadline, and elected to defer action on the matter to a later date. The weight of the evidence establishes that Mr. Schaffer elected to defer filing the appeal until after the extended appeal deadline had passed. Because the late filing of the appeal was attributable to Mr. Schaffer, and not attributable to Iowa Workforce Development or the United States Postal Service, there is no good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because 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 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 5, 2018, reference 01, decision was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that the claimant voluntarily quit on May 31, 2018 without good cause attributable to the employer, remains in effect.

In the event this decision regarding timeliness of the appeal is reversed on appeal, there is sufficient evidence in the hearing record for entry of a decision on the substance of the appeal without need for further hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs