

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KARI A ANDERSON
Claimant

WELLS FARGO FINANCIAL LEASING INC
Employer

APPEAL NO. 19A-UI-02970-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/06/19
Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 24, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2019. The claimant did participate and was represented by attorney Philip Moss. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether the appeal is timely?

Whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on January 24, 2019. Claimant stated that this was not her residence, but that she was having mail sent to this, her sister's residence, and she would go by every few days to check for the mail. She was never given the decision letter from IWD. Claimant states that she did call IWD in early February, 2019 after she had not received the decision. When claimant spoke with an IWD representative, that person told claimant that she'd been denied benefits, but could appeal the denial of benefits. Claimant then spent the next couple of months saving up money to find an attorney and choosing an attorney to hire to handle the appeal. Claimant believed that she needed an attorney to best prosecute her appeal. Claimant's attorney filed the appeal the day that he was hired by claimant.

The decision that was sent to claimant at the address she listed contained a warning that an appeal must be postmarked or received by the Appeals Section by February 3, 2019. The appeal was not filed until April 9, 2019, which is after the date noticed on the disqualification decision.

Claimant stated that she left work early on November 6, 2018. She was not clear as to what extent she'd informed employer prior to her leave of the necessity for her to leave work at that time. She stated after she left that she sat in a parking lot outside of the police station.

Claimant stated that she spoke with a manager at Wells Fargo on November 23, 2018 and raised concerns about the information she could access and about potential problems at her place of business. After that date, claimant became afraid that there would be repercussions from her sharing this information and was afraid to return to work. Claimant stated generally that she tried to call various people and divisions within Wells Fargo during her absences, but gave no specifics when pressed. She did state that no one returned her calls.

Claimant did not return to work. She was informed on December 7, 2018 that she'd been separated from her employment after being a no-call/no-show for work for three consecutive days.

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 calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

Claimant gave IWD the address to where she wanted her decision mailed. Claimant stated that she didn't receive the decision entered in this matter, but did find out the decision entered in early February. At that time, when claimant contacted IWD, she was told that she could appeal the decision denying her benefits. After claimant received the information from IWD concerning the appealing of the decision which denied her benefits, claimant waited an additional two months to proceed forth with the appeal.

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. 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 have a reasonable opportunity to file a timely appeal.

Claimant received notice of the necessity to file an appeal shortly after February 1, 2019. Claimant then spent the next two months securing money to hire an attorney to file an appeal. Due process of law in an administrative hearing requires (1) notice and opportunity to be heard; (2) in a meaningful time and manner; (3) confrontation of adverse witnesses; (4) the right to presentation of one's own evidence. *Carr v. IESC*, 256 N.W.2d 211 (Iowa 1977); *Goldberg v. Kelly*, 397 U.S. 254. "Any party may appear in any proceeding. Any partnership, corporation, or association may be represented by any of its members, officers, or a duly authorized representative. Any party may appear by, or be represented by, an attorney-at-law or a duly authorized representative of an interested party." 871 ICA §26.6(7). Due process in an administrative law hearing does not include the right to an attorney, or the right to have an indefinite amount of time to file an appeal while an appellant saves money and chooses the correct attorney for her appeal.

The administrative law judge concludes that 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 Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that 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).

Even if the administrative law judge would have found claimant to have timely filed an appeal in this matter, said appeal would necessarily fail on its merits. Claimant did not lay out a good cause reason for her stopping to attend her job. Whereas claimant stated that she had fears of repercussions from her conversations about her lack of access to necessary documents, claimant provided no proof why she held these fears. Absent any substantial proof as to why fears were held, claimant's quit cannot be seen as for good cause attributable to employer.

DECISION:

The January 24, 2019, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Additionally, claimant's quit is not seen to be for good cause attributable to employer.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn