

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MATTHEW T HOOD
1228 N FELLOWS
OTTUMWA IA 52501**

**CLARKE ELECTRIC COOP INC
PO BOX 161
OSCEOLA IA 50213-0161**

**Appeal Number: 04A-UI-08872-RT
OC: 07-18-04 R: 03
Claimant: Respondent (4)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Required Findings (Able and Available for Work)
Section 96.5-1 – Voluntary Quitting
Section 96.6-2 – Initial Determination (Timeliness of Appeal)
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Clarke Electric Co-op, Inc., filed a timely appeal from an unemployment insurance decision dated July 26, 2004 reference 02, allowing unemployment insurance benefits to the claimant, Matthew T. Hood. After due notice was issued, a telephone hearing was held on September 7, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he and/or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Roger Cole, Assistant Manager, and Don Lange, Line Superintendent, participated in the hearing for the employer. Department Exhibit 1 was admitted into evidence. The administrative law judge

takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: An unemployment insurance decision dated July 26, 2004, reference 02, determined that the claimant was eligible to receive unemployment insurance benefits as long as he meets all other eligibility requirements because records indicate his separation from work on August 14, 2003 was not disqualifying. That decision was sent to the employer on July 26, 2004, and received by the employer. The employer prepared an appeal letter on July 29, 2004, as shown at Department Exhibit 1, and attempted to fax that appeal to the Appeals Section on July 30, 2004, also as shown at Department Exhibit 1. However, that appeal was not received by the Appeals Section, even though the employer thought that it had been. When the employer did not hear from the Appeals Section, it called the Appeals Section and learned that the fax had not gone through. The employer re-faxed the appeal letter and cover letter on August 17, 2004, as shown at Department Exhibit 1. The decision from which the employer seeks to appeal indicated that an appeal had to be postmarked or otherwise received by the Appeals Section on August 5, 2004. The first fax was timely. The second fax was not timely and, in fact, was 12 days late.

Because the administrative law judge hereinafter concludes that the employer's appeal was late but that the employer has demonstrated good cause for a delay in the filing of its appeal, the administrative law judge further finds: The claimant was employed by the employer as full-time temporary summer help from June 9, 2003 until he voluntarily quit on August 14, 2003. The employer expected the claimant to work through the end of August and had work available for the claimant through the end of August, but the claimant left early on August 14, 2003. The claimant had been in school the previous school year and intended to go back to school the next school year. The employer did not know why the claimant had left work early. Before his separation the claimant had been off work for two weeks when he was injured at work. His physician instructed the claimant that he was not able to perform the functions of his job for a couple of weeks. The claimant then returned to work until August 14, 2003. The claimant did not file for unemployment insurance benefits until an effective date of July 18, 2004, when the claimant had requalified to receive unemployment insurance benefits since being employed by the employer herein. Further, the claimant has received unemployment insurance benefits in the amount of \$212.00 as follows: \$106.00 per week for two weeks, benefit weeks ending July 24 and 31, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely appeal of a decision dated July 26, 2004, reference 02 or, if not, whether the employer demonstrated good cause for such failure. The administrative law judge concludes that the employer's appeal was not timely, but the employer has demonstrated good cause for a delay in the filing of its appeal and, as a consequence, the administrative law judge concludes that the employer's appeal should be accepted and that he has jurisdiction to reach the remaining issues.

2. Whether the claimant's separation from employment was a disqualifying event. It was. However, the claimant has requalified to receive unemployment insurance benefits following the disqualifying separation from the employer herein.

3. Whether the claimant is ineligible to receive unemployment insurance benefits because he is and was not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits for that reason.

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, 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 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 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 not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the employer has the burden to prove that its appeal was timely or that it had good cause for a delay in the filing of its appeal. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that although its appeal was not timely, it has demonstrated good cause for a delay in the filing of its appeal. The employer's witness, Roger Cole, Assistant Manager, credibly testified that the employer prepared its appeal on July 29, 2004 and faxed it to the Appeals Section on July 30, 2004, as shown at Department Exhibit 1. However, that fax was not received by the Appeals Section, although the employer was not aware of that. When the employer had not heard from the Appeals Section, it called the Appeals Section and learned that the fax had not been received and was told to re-fax the appeal. The employer did so on August 17, 2004, and it was received by the Appeals Section on that date. However, by the time the second fax had been received, the appeal was 12 days late, as set out in the Findings of Fact. The administrative law judge does conclude that the employer has demonstrated good cause for the delay in the filing of its appeal. The employer did fax its appeal to the Appeals Section in a timely basis and believed that it had been received by the Appeals Section. When it learned that it had not, it re-faxed the appeal again. The administrative law judge concludes that this is good cause for a delay in the filing of its appeal. Accordingly, the administrative law judge concludes that although the employer's appeal was not timely, it has shown good cause for a delay in filing its appeal and the administrative law judge concludes that the appeal should be accepted and that he has jurisdiction to reach the remaining issues.

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.

Mr. Cole credibly testified and the administrative law judge concludes that the claimant left his employment voluntarily on August 14, 2003. Mr. Cole and the employer's other witness, Don Lange, Line Superintendent, credibly testified that work remained for the claimant had he not quit on August 14, 2003, at least through the end of August 2003. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily. The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code Section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide reasons attributable

to the employer for his quit. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and would be disqualified to receive unemployment insurance benefits. However, Iowa Workforce Development records indicate that the claimant has requalified to receive unemployment insurance benefits following his separation from the employer herein. Therefore, the administrative law judge concludes that the claimant is not disqualified to receive unemployment insurance benefits as a result of his separation from the employer herein if he is otherwise eligible and not otherwise disqualified, but any unemployment insurance benefits to which the claimant may be entitled shall not be charged to the account of the employer herein because he left his employment with the employer herein without good cause attributable to the employer. The administrative law judge reaches no conclusion as to whether the claimant is disqualified to receive unemployment insurance benefits or is ineligible to receive unemployment insurance benefits as a result of any separations from subsequent employers following his employment with the employer herein.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant has the burden of proof to show that he is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence either that he is and/or was, at material times hereto, able and available and earnestly and actively seeking work. The claimant did not participate in the hearing and provide evidence that he is and/or was able, available, and earnestly and actively seeking work. The employer's witnesses testified that the claimant left his employment on August 14, 2003 to return to school and as far as they know, he returned to school. It is true that that was over a year ago, but there is no evidence before the administrative law judge to indicate that the claimant is able, available, and earnestly and actively seeking work. Accordingly, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence that the claimant is able, available, and earnestly and actively seeking work and, as a consequence, he is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he demonstrates that he is able, available, and earnestly and actively seeking work and is otherwise entitled to receive such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in

good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits to which he is no longer eligible. The claimant is overpaid \$212.00.

DECISION:

The representative's decision dated July 26, 2004, reference 02, is modified. The claimant, Matthew T. Hood, is not entitled to receive unemployment insurance benefits because he is not able, available, and earnestly and actively seeking work, until or unless he demonstrates that he is able, available, and earnestly and actively seeking work and is otherwise eligible to receive unemployment insurance benefits. Although his separation from the employer herein was disqualifying, the claimant has requalified to receive unemployment insurance benefits from earnings from subsequent employers after the employer herein, and the claimant is not disqualified to receive unemployment insurance benefits as a result of his separation from the employer herein. Any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein. The administrative law judge reaches no conclusion as to whether the claimant is disqualified to receive unemployment insurance benefits pursuant to a separation from a subsequent employer. The employer has demonstrated good cause for a delay in the filing of its appeal and, as a consequence, the employer's appeal is accepted. The claimant is overpaid \$212.00.

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