

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MUSSIE GEBREYOHANNES**  
Claimant

**WELLS ENTERPRISES INC**  
Employer

**APPEAL 20A-UI-05195-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On June 2, 2020, Mussie Gebreyohannes (claimant) filed an appeal from the May 15, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Wells Enterprises, Inc. (employer) for personal reasons. The parties were properly notified about the hearing. A telephone hearing was held on June 30, 2020. The claimant participated personally. The employer's witness did not answer when called at the number provided and the employer did not participate in the hearing. Yodit (employee number 10039), from CTS Language Link, provided Tigrinya interpretation.

**ISSUES:**

Is the claimant's appeal timely?  
Did the claimant voluntarily quit employment with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Production Helper beginning on November 26, 2018, and his last day worked was April 3, 2020. On that day, the claimant requested, and the employer granted, a two-week leave of absence because he has a family and was concerned for their safety.

On April 20, the claimant returned to work to and asked for additional time off. The claimant has a wife, four children, and an infant. The claimant's children were not in school and the claimant did not feel his wife could adequately school them. She does not work and had to care for the infant. Additionally, she does not speak or read English. The children's teachers would come over to the house to show the children what to do online. The claimant would observe the teachers and then assist the children with their work. The employer denied his request for additional time off and the claimant submitted his resignation.

The claimant filed his claim for benefits effective April 12. On May 15, Iowa Workforce Development (IWD) mailed an unemployment insurance decision that denied benefits to the claimant's last known address of record. He received the decision on May 18, within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 25.

Upon receiving the decision, the claimant read that the decision denied benefits but did not know what that meant. He also saw the date in the letter of "05/25/20." He reached out to his friend on May 23 to ask him what "denied" meant. The friend explained it meant he would not get benefits and asked the claimant to send him the decision. On May 24, the claimant sent him the decision. On May 25, they discussed the decision and the fact he needed to appeal it. The claimant's friend instructed him how to file an appeal. The claimant did not file his appeal until June 2, which is after the date noticed on the unemployment insurance decision.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely. Regular unemployment benefits are denied.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant had knowledge of the denial of benefits prior to the appeal deadline and still filed the appeal after the deadline. He has not established that the failure to file a timely appeal was due to any error or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As a result, the decision remains in effect and regular benefits are denied.

In the alternative, even if the claimant had timely filed the appeal, he still would not be eligible for benefits because he voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25 provides, in relevant part:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is

disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(17) The claimant left because of lack of child care.

...

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

...

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant's decision to quit due to his family responsibilities is not a good cause reason attributable to the employer. He would not be eligible for regular benefits.

**DECISION:**

*Regular Unemployment Insurance Benefits Under State Law*

The May 15, 2020, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Regular unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

*Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act*

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in Federal Pandemic Unemployment Compensation (FPUC). This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” on the last page of the decision.



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Stephanie R. Callahan  
Administrative Law Judge

July 20, 2020  
Decision Dated and Mailed

src/scn

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.