

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHAEL J CRAIGHTON
Claimant

APPEAL NO. 18A-UI-06688-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUE21 INC
Employer

OC: 05/06/18
Claimant: Appellant (4R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Administrative Code Rule 871 - 24.27 – Voluntary Quit of Part-time Employment
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Michael Craighton filed an appeal from the June 4, 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. Craighton voluntarily quit on April 14, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 5, 2018. Mr. Craighton participated. The employer provided written notice that the employer waived participation in the appeal hearing. Exhibits A, B and C and Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether Mr. Craighton separated from the employer for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 4, 2018, Iowa Workforce Development mailed a copy of the June 4, 2018, reference 01, decision to claimant Michael Craighton as his last-known address of record. The decision disqualified Mr. Craighton for benefits and relieved the employer account of Rue21, Inc. of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Craighton voluntarily quit the Rue21 employment on April 14, 2018 without good cause attributable to the employer. The June 4, 2018, reference 01, decision stated that an appeal from the decision must be postmarked by June 14, 2018 or be received by the Appeal Section by that date. Mr. Craighton did not receive the reference 01 decision that was mailed to him on June 4, 2018. However, Mr. Craighton had received a separate decision that allowed benefits to him provided he was otherwise eligible, based on his separation from Wells Fargo Bank NA.

On June 12, 2018, Mr. Craighton contacted Iowa Workforce Development to ask why he was not receiving benefits in light of the favorable decision concerning his separation from Wells Fargo Bank NA. At that time, a Workforce Development representative told Mr. Craighton that the June 4, 2018, reference 01, decision disqualified Mr. Craighton for benefits and that the reference 01 disqualification decision took precedence over the decision that had allowed benefits provided Mr. Craighton was otherwise eligible based on his separation from Wells Fargo. The Workforce Development representative told Mr. Craighton that he would need to file an appeal from the June 4, 2018, reference 01, decision.

On June 12, 2018, Mr. Craighton accessed the Iowa Workforce Development website and attempted to complete and transmit an appeal regarding the June 4, 2018, reference 01, disqualification decision. However, Mr. Craighton did not complete all the steps of the online appeal process and did not transmit an appeal at that time. Mr. Craighton did not receive a confirmation email to indicate successful transmission of an appeal. The Appeals Bureau did not receive an appeal from Mr. Craighton at that time.

On June 19, 2018, Mr. Craighton contacted the Appeals Bureau to inquire about the status of his appeal. At that time, Mr. Craighton learned that the Appeals Bureau had not received an appeal from him. On June 19, 2018, Mr. Craighton accessed the Iowa Workforce Development website and successfully transmitted an appeal to the Appeals Bureau. The Appeals Bureau received the appeal on June 19, 2018. At the time Mr. Craighton filed an appeal from the June 4, 2018, reference 01, decision, he had still not received a copy of the decision.

Mr. Craighton was employed by Rue21, Inc. as a part-time salesperson from November 2017 until April 14, 2018, when he voluntarily quit. During the period of employment with Rue21, Mr. Craighton was also employed full-time with Wells Fargo Bank N A. The part-time employment at Rue21 provided Mr. Craighton with supplemental income. Mr. Craighton voluntarily quit the Rue21 employment for no other reason than that he no longer wished to continue in the part-time, supplemental employment. At the time Mr. Craighton separated from Rue21, he continued in his full-time employment with Wells Fargo N A.

Mr. Craighton established an original claim for benefits that was effective May 6, 2018. Iowa Workforce Development calculated Mr. Craighton's weekly benefit amount at \$455.00. Subsequent to his separation from the part-time Rue21 employment and prior to establishment of the May 6, 2018 original claim, Mr. Craighton was paid in excess of 10 times his weekly benefit amount for work he performed for Wells Fargo N A.

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 evidence in the record establishes 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 evidence establishes good cause to treat Mr. Craighton's June 19, 2018 appeal as a timely appeal from the June 4, 2018, reference 01, decision. Mr. Craighton did not have a reasonable opportunity to file an appeal from the June 4, 2018, reference 01, decision by the June 14, 2018 appeal deadline. Mr. Craighton had not received a copy of the decision. Though Mr. Craighton learned of the decision on June 12, 2018 by telephone, he continued to lack the appeal instructions set forth on the decision. Accordingly, there would be good cause to treat a late appeal as a timely appeal, provided there was not unreasonable delay in filing the appeal once Mr. Craighton had knowledge of the decision. No submission shall be considered timely if the delay in filing was unreasonable under the circumstances in the case. Iowa Administrative

Code rule 871-24.35(2)(c). Mr. Craighton did not unreasonably delay filing an appeal. Without having received the decision, Mr. Craighton made an unsuccessful attempt to file an appeal on June 12, 2018. Mr. Craighton checked in with the Appeals Bureau on June 19, 2018 to inquire about the status of his appeal and only then learned that he had not successfully transmitted an appeal on June 12, 2018. Mr. Craighton promptly made another attempt to file an online appeal and did indeed transmit an appeal on June 19, 2018. The length of time between Mr. Craighton's knowledge of the decision and the filing of an appeal from the decision was seven days. Because there is good cause to treat the late appeal as a timely appeal, the administrative law judge has jurisdiction to enter a decision based on the substance or merits of the appeal.

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.

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 the record establishes a voluntary quit without good cause attributable to the employer. Mr. Craighton left the employment for personal reasons that had nothing to do with the conditions of the Rue21 employment or Rue21 as an employer. The employer account of Rue 21 shall not be charged for benefits.

Iowa Administrative Code Rule 871 - 24.27 provides as follows:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Because Mr. Craighton voluntarily quit the part-time Rue21 employment without good cause attributable to that employer, the base period wage credits from the Rue21 employment will be removed from Mr. Craighton's unemployment insurance claim until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount subsequent to his

separation from the Rue21 employment. Because Mr. Craighton meets the monetary eligibility requirements based on his base period employment with Wells Fargo N A, Mr. Craighton is eligible for reduced benefits based on the Wells Fargo Bank N A base period wages, provided he meets all other eligibility requirements. This matter will be remanded to the Benefits Bureau for determination of the applicable reduced benefit amount.

DECISION:

The claimant's appeal from the June 4, 2018, reference 01, decision was timely. The decision is modified as follows. The claimant voluntarily quit part-time employment with Rue21 on April 14, 2018 without good cause attributable to that employer. That employer's account shall not be charged for benefits paid to the claimant. The base period wage credits from the Rue21 employment shall be removed from the unemployment insurance claim until the claimant has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount subsequent to his separation from the Rue21 employment. The claimant meets the monetary eligibility requirements based on his base period employment with Wells Fargo N A, the claimant is eligible for reduced benefits based on the Wells Fargo Bank N A base period wages, provided he meets all other eligibility requirements.

This is remanded to the Benefits Bureau for determination of the applicable reduced benefit amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs