

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CONSTANCE GRIFFITHS
Claimant

ARONA CORPORATION
Employer

APPEAL NO. 14A-UI-04240-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/23/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Constance Griffiths (claimant) appealed an unemployment insurance decision dated April 10, 2014, (reference 01), which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Arona Corporation (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2014. The claimant participated in the hearing. The employer participated through Sarah Charlier, Human Resources Business Partner and David Richardson, General Manager. Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on April 10, 2014. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 20, 2014. The appeal was not filed until April 23, 2014, which is after the date noticed on the disqualification decision.

The claimant signed her appeal on April 16, 2014, and took it in to a local Workforce office on April 23, 2014. She testified that she initially mailed it but it was returned to her. A copy of the returned envelope was not provided with the appeal, the claimant could not provide the address where she initially mailed it, and she offered no explanation as to why she did not write an additional statement regarding its untimely submission. She testified she just gave everything to the Workforce Representative and relied on her.

The claimant was hired on June 4, 2013, as a full-time customer service representative and she quit on March 4, 2014. She had started going to school and the employer tried to accommodate

her school hours. However, the claimant quit because it was too hard to work, go to school and care for a family.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

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 have a reasonable opportunity to file a timely appeal.

The claimant's explanation that she mailed her appeal in a timely manner is not credible. If she would have provided a postmarked envelope that had been returned to her with her appeal, the Iowa Workforce Representative would have included that with the appeal letter. When she was questioned why she did not provide an additional explanation addressing why the appeal was late, she testified that, "The lady, I took everything in to the lady....I guess I didn't realize it had gotten submitted late because she just told me to bring it in to her and she'll help me out and I just did what I was told by the lady, that was her job, I just did what I was told, I asked her what I needed to do, I followed her instructions."

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 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 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).

However, in the alternative, even if the appeal were to be deemed timely, the administrative law judge would affirm the representative's decision on the merits. The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The claimant quit because it was too hard to work, go to school and take care of her family. Leaving employment to go to school is presumed to be a voluntary separation without good cause attributable to the employer. 871 IAC 24.25(26). The claimant had not established she had good cause attributable to the employer for leaving employment. Benefits are denied.

DECISION:

The claimant's appeal in this case was not timely. The unemployment insurance decision dated April 10, 2014, (reference 01), is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css