

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J HUNTER
Claimant

APPEAL NO. 18A-UI-10537-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 05/20/18
Claimant: Appellant (1/R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Timothy Hunter filed a late appeal from the June 7, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Hunter voluntarily quit on April 27, 2018, without good cause attributable to the employer to move to a new locality. After due notice was issued, a hearing was held on November 5, 2018. Mr. Hunter participated. Michael Uitemarkt represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether Mr. Hunter's appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Hunter established an original claim for benefits that was effective May 20, 2018. On June 7, 2018, Iowa Workforce Development mailed a copy of the June 7, 2018, reference 01, decision to Mr. Hunter at his last-known address of record. The address of record was in Salisbury, Missouri. The decision disqualified Mr. Hunter for benefits, based on the deputy's conclusion that Mr. Hunter voluntarily quit the Walmart employment on April 27, 2018, without good cause attributable to the employer to move to a new locality. The decision stated that an appeal from the decision must be postmarked by June 17, 2018 or be received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. June 17, 2018 was a Sunday. The next working day was Monday, June 18, 2018. Mr. Hunter received the decision in a timely manner, prior to the appeal deadline, but took no steps to appeal from the decision by the deadline set forth on the decision. Mr. Hunter had, by that time, commenced new employment with a different Walmart store in Missouri. Mr. Hunter later commenced employment with Orscheln Farm & Home.

Following a separation from Orscheln, Mr. Hunter again applied for unemployment insurance benefits and established an "additional claim." On October 19, 2018, Iowa Workforce Development mailed a copy of the October 19, 2018, reference 02, decision to Mr. Hunter. That

decision allowed benefits to Mr. Hunter, provided he was otherwise eligible, based on the deputy's conclusion that Mr. Hunter was discharged by Orscheln Farm & Home on September 12, 2018, for no disqualifying reason. Also on October 19, 2018, Iowa Workforce Development mailed a summary letter to Mr. Hunter regarding his eligibility for benefits. Iowa Workforce labeled the summary letter as reference number 03. The letter stated that each protest of Mr. Hunter's claim had been determined separately, that Mr. Hunter had received a decision for each determination, and that Mr. Hunter was disqualified for benefits effective April 27, 2018.

On October 22, 2018, Mr. Hunter accessed the Iowa Workforce Development website and submitted an online appeal. Mr. Hunter did not reference his separation from Walmart, Inc. Instead, Mr. Hunter referenced the later separation from Orscheln. Mr. Hunter stated the reference number of the decision he was appealing from was reference 03, which corresponded to the October 19, 2018 summary letter, not an actual decision.

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 Iowa 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 an untimely appeal. More than ten calendar days elapsed between the June 7, 2018 mailing date of the reference 01 decision and the October 22, 2018 appeal. 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). Mr. Hunter had a reasonable opportunity to file a timely appeal from the June 7, 2018, reference 01, decision. Mr. Hunter elected not to file a timely appeal from the June 7, 2018, reference 01, decision because he had started new employment. Because Mr. Hunter's failure to file a timely appeal was not due to Iowa Workforce Development or due to the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the June 7, 2018, reference 01, decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The June 7, 2018, reference 01, decision is affirmed and shall remain in effect. That decision disqualified the claimant for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on April 27, 2018, without good cause attributable to the employer.

This matter is remanded to the Benefits Bureau for determination of whether the claimant requalified for benefits subsequent to the April 27, 2018 separation by working in and being paid wages for insured work equal to ten times his weekly benefit amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn