

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KARRLISA N WADE**  
Claimant

**APPEAL NO. 20A-UI-07152-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES USA LLC**  
Employer

**OC: 07/14/19**  
**Claimant: Respondent (1)**

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Iowa Code § 96.6-2 – Timeliness of Appeal

Iowa Code § 96.5-1 – Voluntary Quit

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from the June 8, 2020, reference 07, decision that granted benefits. After due notice was issued, a hearing was held on August 4, 2020. The claimant did participate. The employer did participate through Joe Turner and Sonya Masse. Employer's exhibits 1-3 were admitted to the record.

**ISSUES:**

Whether the appeal is timely?

Whether claimant quit for good cause attributable to employer?

Whether claimant was overpaid benefits?

Whether claimant is eligible for Federal Pandemic Unemployment Compensation

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the employer's last known address of record on June 8, 2020. Employer's representative stated that they did receive the decision on June 18, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 18, 2020. The appeal was not filed until June 26, 2020, which is after the date noticed on the disqualification decision. Employer's representative stated that they received the decision on that date and immediately tried to contact Kelly services about what employer wished to do.

The representative additionally stated that they have been inundated with 7x the normal number of claims and this massive number of claims meant that they could not get the appeal in this matter filed until eight days after they received the fact finder's decision.

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

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

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.

The ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 an appeal at or around the date when due. If employer had received the fact finder's decision on the due date, and did not return the appeal for a day or two after receipt, that would have created a difficult decision for the administrative law judge. Such was not the case here. Employer's representative spent over a week before filing their appeal.

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 Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 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).

**DECISION:**

The June 8, 2020, reference 07, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Blair A. Bennett  
Administrative Law Judge

August 10, 2020  
Decision Dated and Mailed

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