

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY P ELDREDGE
Claimant

APPEAL NO. 16A-UI-09144-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VALLEY WEST UNIFORMS INC
Employer

OC: 12/13/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Mary Eldredge filed an appeal from the July 12, 2016, reference 04, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Eldredge had voluntarily quit on May 25, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 8, 2016. Ms. Eldredge participated. Terry Dickerson represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-09145-JTT. Exhibits A, B and C and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the agency's record of benefits disbursed to Ms. Eldredge.

ISSUE:

Whether Ms. Eldredge's appeal from the July 12, 2016, reference 04, decision was a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 12, 2016, Iowa Workforce Development mailed a copy of the July 12, 2016, reference 04, decision to claimant Mary Eldredge at her last known address of record. The decision disqualified Ms. Eldredge for benefits and relieved the employer's account of Valley West Uniforms, Inc., of liability for benefits, based on an agency conclusion that Ms. Eldredge had voluntarily quit on May 25, 2016 without good cause attributable to the employer. The decision was mailed from Des Moines to Ms. Eldredge's address of record in West Des Moines. Ms. Eldredge received the decision in a timely manner, prior to the deadline for appeal. Ms. Eldredge likely received the decision on July 13, 2016. The July 12, 2016, reference 04, decision stated that an appeal from the decision must be postmarked by July 22, 2016 or received by the Appeals Section by that date. Ms. Eldredge did not take steps to appeal from the decision before the appeal deadline.

On August 12, 2016, Iowa Workforce Development mailed a copy of the August 12, 2016, reference 06, decision to Ms. Eldredge at her last-known address record. The decision held that Ms. Eldredge had been overpaid \$908.00 in unemployment insurance benefits for the three weeks between May 22, 2016 and June 11, 2016, based on the earlier decision that disqualified Ms. Eldredge for benefits in connection with her separation from Valley West Uniforms, Inc. The August 12, 2016, reference 06, overpayment decision had an August 22, 2016 appeal deadline.

On August 16, 2016, Ms. Eldredge went to the Workforce Development Center in Des Moines, completed an appeal form regarding the overpayment decision, and delivered the completed appeal form to a Workforce Development representative. The Workforce Development representative then faxed the appeal to a fax number that did not belong to the Appeals Section. Ms. Eldredge followed up on her appeal on August 22, 2016 and learned that Appeals Section had not received the August 16, 2016 appeal. Ms. Eldredge faxed another copy of her appeal to the Appeals Section on August 22, 2016. On August 24, 2016, Ms. Eldredge submitted yet another appeal form in response to an Overpayment Statement that was mailed to her on August 16, 2016.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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, subsection 10, 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 871 AC 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 871 IAC 24.35(1)(b).

Ms. Eldredge's appeal was filed on August 16, 2016, when she hand-delivered the completed appeal form to the staff at the Des Moines Workforce Development Center.

The evidence in the record establishes that more than ten calendar days elapsed between July 12, 2016, when Workforce Development mailed reference 04 decision to Ms. Eldredge and August 16, 2016, when Ms. Eldredge filed her 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).

The record shows that Ms. Eldredge did have a reasonable opportunity to file a timely appeal from the July 12, 2016, reference 04, decision that disqualified her for benefits in connection with her separation from Valley West Uniforms. Ms. Eldredge received the decision in a timely manner, most likely on July 13, 2016. At that point, she still had nine days in which to file an appeal from that decision. Ms. Eldredge did not take any action in response to the decision until she received the later overpayment decision that was mailed to her on August 12, 2016.

The evidence establishes that Ms. Eldredge's late appeal from the July 12, 2016, reference 04, decision that disqualified her for benefits was attributable to Ms. Eldredge and was not attributable either to Workforce Development or the United States Postal Service. Accordingly, there is not good cause under the law to treat the late appeal of the July 12, 2016, reference 04, decision as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The local Workforce Development Center's error in forwarding the appeal that Ms. Eldredge delivered on August 16, 2016 came after the deadline for appealing the July 12, 2016, reference 04, decision had passed.

Because Ms. Eldredge's appeal from the July 12, 2016, reference 04, decision was untimely, the administrative law judge lacks jurisdiction to disturb that decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979). The July 12, 2016, reference 04, decision that disqualified Ms. Eldredge for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Eldredge had voluntarily quit on May 25, 2016 without good cause attributable to the employer, remains in effect.

DECISION:

The July 12, 2016, reference 04, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on May 25, 2016 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs