

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND G MILLER
Claimant

APPEAL NO: 12A-UI-04958-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING
SEDONA STAFFING**
Employer

**OC: 04/03/11
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 17, 2011, reference 05, that held claimant completed a temporary job on March 31, 2011, and which allowed benefits. A telephone hearing was held on May 22, 2012. The claimant did not participate. Colleen McGuinty, unemployment benefits administrator, and Sammy Teel, account representative, participated for the employer.

ISSUE:

Whether the employer filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The employer does not take issue with the department decision that claimant completed a temporary job on March 31, 2011 and remained a part-time employee thereafter. This is why the employer did not appeal.

The employer placed claimant as a direct hire employee for an Illinois employer, McLaughlin Body Co., beginning May 16, 2011. The employer submitted a separation request form to Iowa Workforce Development on June 14, 2011 to establish claimant left for other employment. The department did not consider this issue after it issued the June 17, 2011 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 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 administrative law judge concludes the employer failed to file a timely appeal from the June 17, 2011 decision, but it did not intend to appeal it. The employer did not have an issue that claimant completed his temporary job on March 31, remained a part-time employee, but who accepted other employment with McLaughlin Body Co. (Illinois) beginning May 16. There is no record the department made any adjudication of this employment separation issue.

DECISION:

The department decision dated June 17, 2011, reference 05, is affirmed. The employer failed to file a timely appeal. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw