

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER D JEPSEN**  
Claimant

**APPEAL NO. 16A-UI-07131-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INTERNATIONAL INC**  
Employer

**OC: 05/15/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Heather Jepsen filed an appeal from the June 17, 2016, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Jepsen had voluntarily quit without good cause attributable to the employer on May 11, 2016. After due notice was issued, a hearing was held on July 15, 2016. Ms. Jepsen participated. Brian Bahl represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether the 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: On June 17, 2016, Iowa Workforce Development mailed a copy of the June 17, 2016, reference 02, decision to Heather Jepsen at her last-known address of record. Ms. Jepsen received the decision in a timely manner, within a couple days of the June 17, 2016 mailing date. The decision disqualified her for benefits and relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Jepsen had voluntarily quit without good cause attributable to the employer on May 11, 2016. The decision stated that an appeal from the decision must be postmarked by June 27, 2016 or received by the Appeals Section by that date. The decision provided instructions for filing an appeal. The decision provided a customer service telephone number that Ms. Jepsen could call if she had questions about the decision or needed assistance with filing an appeal.

When Ms. Jepsen received the June 17, 2016 decision, she read through it. Ms. Jepsen noted that the decision disqualified her for unemployment insurance benefits. She did not note the appeal deadline. Ms. Jepsen is a high school graduate. Ms. Jepsen advises that she suffers from bipolar disorder and takes prescription medication to manage that health condition. Ms. Jepsen received some special education services in high school, but participated in regular classes and took the same tests as her same grade peers. Ms. Jepsen has some issues with

reading, but does not know her grade-equivalent reading level. Ms. Jepsen presented herself at the appeal hearing as an articulate individual of normal intelligence. At the time Ms. Jepsen received the June 17, 2016 decision, she and her husband were residing with an aunt, who advised Ms. Jepsen to call Workforce Development about the decision. Ms. Jepsen decided to delay taking action on the matter. On the morning of June 28, 2016, Ms. Jepsen telephoned Workforce Development regarding the decision that denied benefits and was advised to file an appeal. Immediately thereafter, Ms. Jepsen completed an online appeal through the Workforce Development website.

## **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. Jepsen's appeal was filed on June 28, 2016 at the time she submitted her online appeal and the Appeals Bureau received the appeal. However, because Ms. Jepsen filed her appeal the day after the appeal deadline, more than ten calendar days elapsed between the mailing date of the decision and the date the 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 Ms. Jepsen 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 evidence in the record establishes that Ms. Jepsen did indeed have a reasonable opportunity to file a timely appeal. Ms. Jepsen received the decision in a timely manner. At the time she received the decision, she had more than a week in which to file an appeal by the deadline. Ms. Jepsen was able to read that portion of the decision that stated she was disqualified for benefits. The weight of the evidence indicates that Ms. Jepsen was also able to read and understand the appeal deadline information, the phone number for customer service and the instructions for appeal. The appeal was late solely because Ms. Jepsen elected to delay taking further action on the matter for more than a week after she received the decision. Ms. Jepsen finally got around to taking action on the matter on June 28, 2016. Ms. Jepsen had the ability to contact Workforce Development much sooner than she did to get answers to her questions about the decision. Ms. Jepsen demonstrated the ability to file an appeal when she quickly filed the late appeal after her contact with Workforce Development on June 28, 2016.

The administrative law judge concludes that Ms. Jepsen's failure to file a timely appeal was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), Ms. Jepsen had failed to preserve her right to challenge the decision. Because the appeal was untimely, the administrative law judge lacks legal authority to disturb the decision from which Ms. Jepsen appeals. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

In the event this decision regarding the timeliness of the appeal is reversed upon further appeal, there is sufficient evidence in the record to decide the issues related to Ms. Jepsen's separation from the employment without need for further hearing.

**DECISION:**

The June 17, 2016, reference 02, 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 the May 11, 2016 voluntary quit, remains in effect.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs