

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE F DIAZ
Claimant

APPEAL NO. 09A-UI-18029-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 10/18/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jose Diaz filed an appeal from a representative's decision dated November 9, 2009, reference 01, which denied unemployment insurance benefits. After due notice was issued, a hearing was held by telephone on January 15, 2010. The claimant participated personally. The employer participated by Ms. Jacque Finkral. Employer's Exhibits One and Two were marked and received into evidence. Exhibit Three was offered but not received.

ISSUE:

The issue in this matter is whether the appeal filed herein was timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record finds that a disqualification decision was mailed to the claimant's last-known address of record on November 9, 2009. The claimant received the decision. The decision contained a warning that the appeal must be postmarked and received by the Appeals Section by November 19, 2009. The appeal was not filed until December 1, 2009, which is after the date noticed on the disqualification decision. Mr. Diaz received the decision at his address of record but took no action to have it interpreted into Spanish or to file an appeal. The claimant "piled it up" with other correspondence in English and took no action to have the documents interpreted until a later date which is beyond the ten-day statutory time limit for filing an appeal in this matter.

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, 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 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. The administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. See Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional as the facts of the case show that the notice was invalid. See Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Mr. Diaz took no action to have the documentation interpreted although this service was readily available at each area claim center as well as through other sources.

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 action by the United States Postal Service pursuant to 871 IAC 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.

DECISION:

The representative's decision dated November 9, 2009, reference 01, is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs