

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BENJY T BOUTCHEE
Claimant

APPEAL NO 21A-UI-05427-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIES-MIDLAND CO
Employer

OC: 06/21/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a late appeal from the October 23, 2020, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on July 1, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 23, 2021. Claimant, Benjy Boutchee, participated. The employer registered a telephone number for the hearing, but was not available at the registered number at the time of the hearing. The administrative law judge took official notice of the October 23, 2020, reference 01, decision and received Exhibit A, the online appeal, into evidence. The administrative law judge took official notice of dates of incarceration and withdrawal of the no contact order referenced in the clerk of court record pertaining to Polk County Case Number AGCR342299, available to the public at www.iowacourts.state.ia.us.

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 October 23, 2020, Iowa Workforce Development mailed the October 23, 2020, reference 01, decision to the claimant at his Des Moines last-known address of record. The decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on July 1, 2020 without good cause attributable to the employer. The decision stated that the decision would become final unless an appeal was postmarked by November 2, 2020 or was received by the Appeals Section by that date. The weight of the evidence indicates that the October 23, 2020, reference 01, decision was delivered to the address of record in a timely manner, prior to the deadline for appeal.

At the time the decision was mailed to the claimant, the claimant was temporarily not residing at the address of record. Until October 22, 2020, the claimant was incarcerated in the Polk County

Jail. The claimant was released from custody on October 22, 2020, but was at that time subject to a no contact order that prevented him from returning home or communication with his wife, who continued to reside at the address of record. While the no contact was order was in effect, the clamant temporarily resided with his parents and others. The claimant had not made any arrangements to have his mail forwarded to where he was residing.

The no contact order was lifted effective November 23, 2020. Upon his return home, the claimant observed a sizeable stack of unopened mail. The claimant glanced though the stack, but elected not to open or review any of the correspondence. The weight of the evidence indicates that the October 23, 2020, reference 01, decision was likely in the stack of unopened correspondence.

The claimant took no further action on the matter until February 2021, when his probation officer directed him to apply for unemployment insurance benefits. At that time, the claimant contacted Iowa Workforce Development and an Agency representative referenced the October 23, 2020, reference 01, decision that disqualified the claimant for benefits.

On February 18, 2021, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal on February 18, 2021. In the online appeal, the claimant referenced receiving the decision on October 23, 3020.

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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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 weight of the evidence establishes an untimely appeal. Based on the no contact order that temporarily prohibited the claimant from communicating with his spouse, the administrative law judge concludes the claimant did not have a reasonable opportunity to file an appeal by the November 2, 2020 deadline. However, circumstances changed on November 23, 2020, when the no contact order was lifted and the claimant returned home. At that point the claimant made a conscious decision not to open, review or respond his mail that had accumulated at the family home during his absence. The weight of the evidence establishes that the October 23, 2020, reference 01, decision likely amongst the accumulated, unopened correspondence. The claimant's decision not to review his mail was unreasonable. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). The evidence indicates the claimant unreasonably delayed filing an appeal until February 18, 2021. Because the delay was attributable to the claimant, and not attributable to Iowa Workforce Development or the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the October 23, 2020 decision that disqualified the claimant for benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The October 23, 2020, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on July 1, 2020 without good cause attributable to the employer, remains in effect.



James E. Timberland
Administrative Law Judge

April 28, 2021
Decision Dated and Mailed

jet/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.