

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MOHAMED H ABDELAZIZ
Claimant

WALMART INC.
Employer

APPEAL 21A-UI-10078-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code §96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Mohamed H Abdelaziz, the claimant/appellant, filed an appeal from the September 17, 2020, (reference 01) unemployment insurance decision that denied REGULAR unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 24, 2021. Mr. Abdelaziz participated and testified through an Arabic CTS Language Link interpreter. The employer participated through Tim Shane, manager.

ISSUES:

Is Mr. Abdelaziz's appeal filed on time?
Did Mr. Abdelaziz voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Abdelaziz at the correct address on September 17, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 27, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. September 27, 2020 was a Sunday; therefore, the deadline was extended to Monday, September 28, 2020.

Mr. Abdelaziz received the decision in the mail around September 28, 2020. Mr. Abdelaziz called Iowa Workforce Development but was not able to talk with a representative. Mr. Abdelaziz was also having some health issues and English is not his primary language. Also, Mr. Abdelaziz was out of the country for a period of time. All of these issues delayed Mr. Abdelaziz from filing his appeal. In April 2021, Mr. Abdelaziz went to an Iowa Workforce Development office. The representative told Mr. Abdelaziz he could file an appeal. Mr. Abdelaziz filed an appeal via fax on April 1, 2021. The appeal was received by Iowa Workforce Development on April 1, 2021

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Abdelaziz's appeal was not filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

Mr. Abdelaziz received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Mr. Abdelaziz's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service.

It is understandable that Mr. Abdelaziz's may have been delayed for some time period due to the language barrier. However, Mr. Abdelaziz filed his appeal more than five months after he received it. To not file an appeal for more than five months due to Mr. Abdelaziz's language

barrier is not a good cause. No other good cause reason has been established for the delay. Mr. Abdelaziz's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Mr. Abdelaziz's appeal was not filed on time. The September 17, 2020, (reference 01) unemployment insurance decision is affirmed.



Daniel Zeno
Administrative Law Judge
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July 7, 2021
Decision Dated and Mailed

dz/lj