

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE WADDEN
Claimant

APPEAL NO. 15A-UI-01988-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

**OC: 01/04/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Stephanie Wadden filed an appeal from the January 30, 2015, reference 02, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had voluntarily quit on December 12, 2014 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 19, 2015. Ms. Wadden participated. Holly Jacobi, Account Manager, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal No. 15A-UI-01989-JTT. Department Exhibits D-1, D-2, D-3, and D-5 were received into evidence.

ISSUES:

Whether the appeal from the January 30, 2015, reference 02, decision 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 February 2, 2015, Iowa Workforce Development mailed a copy of the February 2, 2015, reference 04, decision to Stephanie Wadden's last-known address of record. The decision disqualified Ms. Wadden for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Wadden had voluntarily quit on December 12, 2014 without good cause attributable to the employer. The decision was received at Ms. Wadden's address of record in a timely manner prior to the deadline for appeal. Ms. Wadden shares a mailbox with her mother. The mailbox is located up the road from Ms. Wadden's residence. Ms. Wadden and her mother only check the mailbox twice a week. At the same time Workforce Development mailed a copy of the decision to Ms. Wadden, Workforce Development also mailed a copy to the employer. The employer received its copy of the decision at its address of record in Burlington on February 3, 2015. The decision would have arrived at Ms. Wadden's mailbox on or about the same day. Ms. Wadden's mother collected Ms. Wadden's copy of the reference 02 decision from their mailbox on or about February 6, 2015. The decision contained a warning that an appeal from the decision must be postmarked by February 9, 2015 or received by Workforce Development by that date. Ms. Wadden did not note the appeal deadline on the reference 02 decision.

On February 2, 2015, Iowa Workforce Development had mailed a reference 04 decision to Ms. Wadden. That decision said that Ms. Wadden was overpaid benefits and that she would have to repay benefits. The overpayment decision contained a February 12, 2015 appeal deadline.

On or about February 9, 2015, Ms. Wadden began drafting her appeal. On February 11, 2015, Ms. Wadden took her appeal to the post office and mailed her appeal. The envelope in which the appeal was mailed bears a February 11, 2015 postmark. The Appeals Section received the appeal on February 13, 2015.

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. Wadden's appeal was filed on February 11, 2015, because that was the postmark date on the envelope.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the January 30, 2015, reference 02, decision and the February 11, 2015 appeal. 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.

Ms. Wadden's appeal from the January 30, 2015, reference 02, decision was untimely because she did not collect her mail from the mailbox in a timely manner, did not heed the appeal deadline, drafted her appeal on the day it was due, but then delayed mailing it for two days. The late filing of the 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. Wadden has failed to present her right to challenge the decision and the administrative law judge no longer has jurisdiction to disturb the decision. 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 from the January 30, 2015, reference 02, decision was untimely. The decision is affirmed and remains in effect. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/can