

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANDREW J FOGLE
Claimant

APPEAL NO. 18A-UI-06323-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AFFINITY CREDIT UNION
Employer

OC: 04/29/18
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit
Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Andrew Fogle (claimant) appealed a representative's May 25, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Affinity Credit Union (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 25, 2018. The claimant was represented by Michael Carroll, Attorney at Law, and participated personally. The employer participated by Angie Hackenmiller, Human Resources Business Partner; Dan Miller, Human Resources Business Partner; and Christian Quijano, Board Chairman. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and 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 May 25, 2018. He did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 4, 2018. The claimant was out of town on vacation and returned home on June 4, 2018. He opened the decision at approximately 10:00 p.m. on June 4, 2018. At that time he assumed it was too late and did not file an appeal the decision. On June 7, 2018, his attorney counseled him to file an appeal. He did not file an appeal on June 7, 2018. On June 8, 2018, the claimant sought information from the department and filed an appeal.

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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

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, 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 received the decision late on the last of ten days. After he found out about the decision he took four days to file his appeal. The claimant did not take steps to immediately file an appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law or immediately upon discovery was not due to any Agency error or misinformation or delay or other action of 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 § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The May 25, 2018, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is not eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs