

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRITTNEY L MOELLER
Claimant

APPEAL NO. 20A-UI-14142-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCURA HEALTHCARE OF MILFORD, LLC
Employer

OC: 03/29/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a late appeal from the April 24, 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 January 23, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 7, 2021. Claimant participated. The employer did not provide a telephone number for hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 20A-UI-14143-JTT and 20A-UI-14144-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, April 24, 2020 (reference 01) decision, the reference 01 fact-finding materials, the October 27, 2020 (reference 03) decision, the October 29, 2020 (reference 04) decision, the June 9, 2020 application for PUA benefits, and the September 9, 2020, Assessment for PUA Benefits.

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: The claimant established an original claim for state benefits that was effective March 29, 2020.

On April 24, 2020, Iowa Workforce Development mailed the reference 01 to the claimant at her last-known address of record. The decision 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 January 23, 2020 without good cause attributable to the employer. The decision stated that the decision would become final unless an appeal was postmarked by May 4, 2020 or received by the Appeal Section by that date. The claimant received the decision in a timely manner prior to the appeal deadline, but did not take steps to file an appeal by the appeal deadline.

On June 9, 2020, the claimant filed an application for Pandemic Unemployment Assistance (PUA) benefits. On September 9, 2020, IWD issued a decision allowing PUA benefits for the period beginning April 19, 2020.

On October 27, 2020, IWD issued a reference 03 decision that held the claimant was overpaid \$1,088.00 in regular benefits for three weeks between March 29, 2020 and April 18, 2020, based on the decision that disqualified the claimant for state benefits in connection with her voluntarily quit from Accura Healthcare of Milford, L.L.C.

On October 29, 2020, IWD issued a reference 04 decision that held the claimant was overpaid \$1,800.00 in Federal Pandemic Unemployment Compensation (FPUC) for three weeks between March 29, 2020 and April 18, 2020, based on the October 27, 2020 overpayment decision that stated the claimant was not eligible for benefits for the three weeks in question.

On November 2, 2020, the claimant completed an online appeal from the reference 03 overpayment decision. The Appeals Bureau received the appeal on November 2, 2020 and treated as an appeal also from the April 24, 2020 (reference 01) disqualification and the October 29, 2020 (reference 04) FPUC overpayment decision.

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 evidence establishes that the appeal from the April 24, 2020 (reference 01) disqualification decision is untimely. The claimant received the decision in a timely manner and had a reasonable opportunity to file an appeal by the May 4, 2020 appeal deadline. The fact that the claimant applied for PUA benefits a month after the appeal deadline applicable to the reference 01 decision has no bearing on the timeliness issue. Because the late filing of the appeal was attributable to the claimant, and not attributable to IWD or to 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 from the April 24, 2020 (reference 01) decision was untimely, the administrative law judge lack jurisdiction to disturb that 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 April 24, 2020 (reference 01) decision was untimely. The decision that disqualified the claimant for regular state 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 January 23, 2020 without good cause attributable to the employer, remains in effect.

The present decision does nothing to disturb the September 9, 2020, decision that allowed PUA benefits for the period beginning April 19, 2020.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

January 25, 2021
Decision Dated and Mailed

jet/scn