

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEDRICK W WESTBROOK
Claimant

**ALUMINUM CO OF AMERICA
DAVENPORT WORKS**
Employer

APPEAL 18A-UI-03729-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/18/18
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Dedrick W. Westbrook (claimant) filed an appeal from the March 9, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Aluminum Co of America Davenport Works (employer) due to personal reasons, which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A hearing was held at 3:00 p.m. on May 30, 2018 in Davenport, Iowa. The claimant participated. The employer did not respond to the hearing notice and did not participate. The Claimant's Exhibits A through D and the Department's Exhibits D1 and D2 were admitted into the record.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on March 9, 2018. He received the decision within ten days on March 15, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by March 19, 2018. The appeal was not filed until March 23, 2018, which is after the date noticed on the disqualification decision, because the claimant took additional time to gather medical documentation related to his appeal. However, the lack of medical documentation did not prevent him from filing his appeal prior to March 19, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

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. Bd. 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant's decision to wait to file the appeal while he gathered additional information does not render the notice he received invalid. The claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The March 9, 2018, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn