

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JAMES F FOSTER**

Claimant

**APPEAL NO. 20A-UI-03243-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**

Employer

**OC: 03/01/20**

**Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.5(1)(j) – Temporary Employment Separation

**STATEMENT OF THE CASE:**

James Foster filed a late appeal from the March 27, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Foster voluntarily quit on February 28, 2020 without good cause attributable to the temporary employment firm by failing to notify the employer within three working days of completing an assignment after having been notified of his obligation to make such contact. After due notice was issued, a hearing was held on May 11, 2020. Mr. Foster participated. Mai Lor represented the employer. Jayden Prunchak was available as a witness for the employer, but was not called to testify. The administrative law judge took official notice of the March 27, 2020, reference 01, decision. Exhibit A was received into evidence.

**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: On Friday, March 27, 2020, Iowa Workforce Development mailed the March 27, 2020, reference 01, decision to claimant James Foster at his last known address of record. Mr. Foster received the decision in a timely manner, on Monday, March 30, 2020 or Tuesday, March 31, 2020. Mr. Foster read far enough into the decision to see that the decision disqualified him for unemployment insurance benefits. Mr. Foster did not read far enough into the decision to read the paragraph about appeal rights and the appeal deadline. The decision stated that an appeal from the decision must be postmarked by April 6, 2020 or be received by the Appeal Section by that date. On April 17, 2020, Mr. Foster sent an appeal email message to the Appeals Bureau. In the appeal email, Mr. Foster stated that his appeal was late because he had been without computer access until he cobbled together a computer from an old computer. The Appeals Bureau received Mr. Foster's appeal on April 17, 2020.

## 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).

Mr. Foster's appeal was filed on April 17, 2020, when the Appeals Bureau received Mr. Foster's emailed appeal. 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). 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 Mr. Foster did have a reasonable opportunity to file an appeal by the April 6, 2020 deadline in light of his receipt of the decision six or seven days before the appeal deadline.

There is not good cause to treat Mr. Foster's late appeal as a timely appeal. The late filing of the appeal was attributable to Mr. Foster's failure to read the appeal deadline information in the decision and his decision to delay filing the appeal until April 17, 2020, 11 days after the appeal deadline. Mr. Foster's computer access issue would be a matter of personal responsibility and not attributable to Iowa Workforce Development or the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). Mr. Foster's lack of computer access did not prevent him from submitting an appeal by fax, by mail, or by borrowing computer access. Because the appeal was not filed in a timely manner pursuant to the requirements of Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the March 27, 2020, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

#### DECISION:

The claimant's appeal from the March 27, 2020, reference 01, decision was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits in connection with the February 28, 2020 separation remained in effect.



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James E. Timberland  
Administrative Law Judge

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May 14, 2020  
Decision Dated and Mailed

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