

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HUGH E FETTERS

Claimant

APPEAL NO. 19A-UI-08705-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 07/14/19

Claimant: Appellant (1)

Iowa Code Section 95.5(1)(j) – Temporary Employment Separation
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Hugh Fetters filed an appeal from the August 16, 2019 (reference 02) 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. Fetters voluntarily quit the employment effective July 15, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 2, 2019. Mr. Fetters participated. Melissa Lewien represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-08706-JTT. Exhibit A and Department Exhibits D-1 and D-2 were 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 August 16, 2019, Iowa Workforce Development mailed the August 16, 2019 (reference 02) decision to claimant Hugh Fetters at his last-known address of record. The address of record is in Ames. The reference 02 decision disqualified Mr. Fetters for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Fetters voluntarily quit employment with Advance Services, Inc. effective July 15, 2019 without good cause attributable to the employer. The reference 02 decision stated that an appeal from the decision must be postmarked by August 26, 2019 or be received by the Appeals Bureau by that date. Though the decision was initially routed to Mr. Fetters neighbor, Mr. Fetters received the decision in a timely manner on August 23, 2019.

On August 19, 2019, Iowa Workforce Development mailed an August 19, 2019 (reference 03) decision to Mr. Fetters at the same last-known address of record. The reference 03 decision held that Mr. Fetters was overpaid \$1,696.00 in benefits for four weeks between July 14, 2019 and August 10, 2019, based on the earlier decision that disqualified him for benefits in connection with his separation from Advance Services, Inc. The reference 03 decision stated that an appeal from the decision must be postmarked by August 29, 2019 or be received by the

Appeals Bureau by that date. Mr. Fetters received the decision in a timely manner on August 21 or 22, 2019.

On August 24, 2019, Mr. Fetters contacted Iowa Workforce Development and spoke to an Agency representative who advised him to file an appeal.

Mr. Fetters did not take steps to file an appeal from either decision by the applicable appeal deadline. Mr. Fetters' mother was hospitalized in Des Moines from August 19, 2019 until October 31, 2019. While Mr. Fetters' mother was hospitalized, hospital staff cared for Mr. Fetters mother and Mr. Fetter did not care for his mother. Mr. Fetters' mother's health issues did not prevent him from filing an appeal from either decision by the applicable deadline. In Mr. Fetters' words, he "spaced off" filing an appeal from the decisions. On November 5, 2019, Mr. Fetters filed an appeal by having his wife fax an appeal to the Appeals Bureau. The Appeals Bureau received the appeal on November 5, 2019.

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). 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 evidence in the record establishes an untimely appeal from the August 16, 2019 (reference 02) decision. Mr. Fetters received the decision in a timely manner and had a reasonable opportunity to file an appeal by the August 26, 2019 appeal deadline. Mr. Fetters elected to delay filing the appeal until more than two months beyond the appeal deadline. Because the late filing of the appeal was attributable to Mr. Fetters, and not attributable to Iowa Workforce Development or 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 was untimely, the administrative law judge lacks jurisdiction to make a disturb the August 16, 2019 (reference 02) 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 decision is August 16, 2019 (reference 02) decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit the employment effective July 15, 2019 without good cause attributable to the employer, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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