

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAROL A SNOW
Claimant

APPEAL 21A-UI-09338-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REACH FOR YOUR POTENTIAL INC
Employer

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code §96.5(1)j- Voluntary Quitting-Temporary Employment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 8, 2021, (reference 04) unemployment insurance decision that disallowed benefits based upon claimant voluntarily quitting due to personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on June 9, 2021. The claimant participated and testified. The employer participated through Bobbi Chipman. Witness Vicki Wailand testified for the claimant and Stuart Kunkel testified for the employer. Exhibits A, B, C, D, E, F, G, H, I and J were admitted into the record. Administrative notice was taken of the claimant's unemployment benefits records, Iowa Workforce representative's decision dated March 8, 2021 and appeal submission documents.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A unemployment insurance decision was mailed to the claimant's last known address of record on March 8, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by March 18, 2021.

Claimant was in the hospital beginning March 2, 2021, and was discharged March 21, 2021. Claimant received the decision within the appeal period and called Iowa Workforce Development before March 18, 2021. The appeal was not filed until March 29, 2021, which is after the date noticed on the unemployment insurance decision.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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. 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 administrative law judge concludes that 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). 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. 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). Claimant testified she was in the hospital and received the notice before the March 18, 2021 deadline. Claimant also testified she called the agency and spoke to them about her condition and they granted her additional time. Claimant could not testify which day she called or whom she spoke to when she called the agency. The fact that the claimant admits to receiving the notice prior to March 18, 2021, and being well enough to call the department to inquire into her ability to appeal demonstrates she was not deprived of a reasonable opportunity to assert an appeal in a timely fashion. Additionally, the claimant waited an additional eight days after her discharge to file an appeal. Benefits are denied.

DECISION:

The March 8, 2021, (reference 04) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

June 23, 2021
Decision Dated and Mailed

cs/lj

