

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

VERONICA R GARCIA
3075 TAYLOR AVE
DOWS IA 50071

IOWA AG LLC
2675 HWY 69
GAIT IA 50101

Appeal Number: 05A-UI-03470-RT
OC: 02-06-05 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, Veronica R. Garcia, filed an appeal from an unemployment insurance decision dated March 8, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on April 21, 2005, with the claimant not participating. Although the claimant had called in a telephone number where she purportedly could be reached for the hearing, when the administrative law judge three times tried to call that number, no one ever answered the phone. The claimant also appeared to have a witness that the administrative law judge called and the administrative law judge reached a voice mail for the witness. The administrative law judge left a message that he was calling about the hearing involving Ms. Garcia but could not reach her and that he was going to proceed with the hearing

and if Ms. Garcia wanted to participate, she needed to call before the hearing was over and the record was closed. The hearing began when the record was opened at 1:10 p.m. and ended when the record was closed at 1:18 p.m. and the claimant had not called during that time. The Appeals Section had obtained the services of an interpreter, Rosa Maria Paramo-Ricoy, who remained available during the hearing in case the claimant called but the claimant did not call. Martin Salinas participated in the hearing for the employer, Iowa Ag LLC. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on March 8, 2005, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because she voluntarily quit work on February 5, 2005 by refusing to continue working and her quitting was not caused by her employer. This decision was sent on the same day to the claimant and received by the claimant on March 10, 2005 as shown by the claimant's appeal at Department Exhibit One. This decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by March 18, 2005. However, the claimant left her appeal at a local Iowa Workforce Development office on March 31, 2005, as shown at Department Exhibit One, making the appeal 13 days late. The appeal is dated March 31, 2005. The claimant did not participate in the hearing to provide evidence why the appeal was late. In her appeal the claimant states that the appeal was late because she was down in Texas because her mother was sick and had diabetes and then when her mother got out, her dad became sick and it was too much stress on the claimant and she did not have her head clear enough to call in and file her appeal. However, the claimant did not participate in the hearing to provide such evidence or to provide foundation for her statement.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

Whether the claimant filed a timely appeal or, if not, whether the claimant demonstrated good cause for such failure. The administrative law judge concludes that the claimant's appeal is not timely and the claimant has not demonstrated good cause for the delay in the filing of her appeal and, as a consequence, the claimant's appeal should not be accepted and the administrative law judge has no jurisdiction to reach the remaining issue.

Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach this issue.

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, subsection 10, 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 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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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. 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

(2) The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

871 IAC 24.35(1)(2) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, 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 is 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.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The administrative law judge concludes that the claimant has the burden to prove that her appeal was timely or that she had good cause for the delay in the filing of her appeal. The administrative law judge concludes that the claimant has failed to demonstrate by a preponderance of the evidence either that her appeal was timely or that she had good cause for the delay in the filing of her appeal. On its face the claimant's appeal is 13 days late as shown at Department Exhibit One and as set out in the findings of fact. The claimant did not participate in the hearing and demonstrate by a preponderance of the evidence that she had good cause for the delay in the filing of her appeal. The appeal indicates that the claimant received the decision which she seeks to appeal on March 10, 2005. That would have given the claimant ample opportunity to file the appeal before the appeal deadline. The claimant did not do so. The claimant stated in her appeal letter that she was down in Texas because her mother was ill and then her father was ill and she was under too much stress and did not have her head clear enough to call in and file her appeal. However, there are no dates given as to when the claimant was in Texas and her appeal clearly indicates that she received the decision on March 10, 2005. There is no evidence that the delay in filing the claimant's appeal was due to any error or misinformation on the part of Iowa Workforce Development or to any delay or

other action by the U.S. Postal Service. The administrative law judge is constrained to conclude that the claimant has not shown good cause for the delay in the filing of her appeal. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated March 8, 2005, reference 01, is not timely and the claimant has not demonstrated good cause for the delay in the filing of her appeal. Therefore, the administrative law judge concludes that the claimant's appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the other issue presented, the separation from employment. The administrative law judge further concludes that the representative's decision of March 8, 2005, reference 01, should remain in full force and effect.

DECISION:

The representative's decision of March 8, 2005, reference 01, is to remain in full force and effect. The claimant, Veronica R. Garcia, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits. The claimant's attempted appeal is not timely and the claimant has not demonstrated good cause for its delay.

pjs/pjs