

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VAN HNUNI**  
Claimant

**APPEAL 18A-UI-11114-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 09/30/18  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 30, 2018, (reference 01) unemployment insurance decision that denied benefits based. The parties were properly notified about the hearing. A telephone hearing was held on November 30, 2018. Claimant participated with the assistance of a Burmese interpreter from CTS Language Link. Employer did not participate. Department's Exhibits D-1 was received into evidence.

**ISSUES:**

Is the appeal timely?

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production line worker last assigned at Andersen Window from May 22, 2018, until she was separated from the assignment, but not the employment, on October 2, 2018. The employer assignment representative notified the claimant that the assignment had ended. No mention was made of additional assignments. Claimant could not recall seeing or receiving a policy with instructions on what to do when an assignment is ended.

A disqualifying unemployment insurance decision was mailed to the claimant's last known address of record on October 30, 2018. Claimant testified, though the decision date is listed as October 30, 2018, she thought she recalled seeing a postmark date of November 2, 2018. The claimant could not recall for certain when she received the decision, but testified mail from Des Moines usually arrives to her within two to three days. Claimant does not read or understand English and therefore was unable to read or understand the decision. Claimant did see instructions on the back of the hearing notice in her native language instructing her to contact Iowa Workforce Development (IWD) for assistance in interpreting the decision. Those instructions warned that there were appeal deadlines, but did not provide any information as to what those deadlines were. Claimant went in to her local IWD office at her earliest

convenience, on November 13, 2018, for assistance in interpreting the letter. Claimant immediately filed her appeal upon learning of the decision determination and her appeal rights.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

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).

Here, there is some indication that there was a delay of three days between the decision date and when the decision was actually mailed. Additionally, the claimant's lack of proficiency in English created a language barrier, which hindered her ability to file her appeal by the prescribed deadline. Her inability to personally understand the fact finding decision affected her ability to timely appeal the adverse decision through no fault of her own. Due process principles apply in the context of appeal hearings for persons seeking unemployment benefits. *Silva v. Employment Appeal Board*, 547 N.W.2d 232 (Iowa App. 1996). Two of the benchmarks of due process are adequate notice and meaningful opportunity to be heard. The claimant was not afforded due process rights. While the claimant was literally provided the decision, she could not timely comply with the appeal instructions, as she required additional time to fully understand the decision, along with her corresponding appeal rights and instructions. Once claimant was able to seek and receive assistance in understanding the decision and her appeal rights, she immediately filed an appeal. Accordingly, the claimant's appeal is accepted as timely.

The next issue to be decision is whether the claimant voluntarily quit with good cause attributable to the employer. For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

Iowa Code § 96.5(1)j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

Since employer provided no evidence that it presented claimant with a written copy of the reporting policy, claimant's recollection that she did not receive notice of the reporting policy is credible. Since the employer did not provide instruction about what to do at the end of the assignment according to Iowa Code § 96.5(1)j, the separation is not disqualifying.

**DECISION:**

The October 30, 2018, (reference 01) unemployment insurance decision is reversed. The appeal is timely. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs