

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MALLORY LONEY**

Claimant

**APPEAL NO. 17A-UI-03481-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**T M INCORPORATED**

Employer

**OC: 07/31/16**

**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Mallory Loney filed an appeal from the February 2, 2017, reference 04, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Loney voluntarily quit the employment on October 28, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 21, 2017. Ms. Loney participated. Cary Reisch represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-03482-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2, A, B, D-1 and D-2 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 February 2, 2017, Iowa Workforce Development mailed the February 2, 2017, reference 04, decision to Mallory Loney at her last known address of record. The decision disqualified Ms. Loney for benefits and relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Loney voluntarily quit the employment on October 28, 2016 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by February 12, 2017 or received by the Appeals Section by that date. The back of the decision contained clear and concise instructions for filing an appeal from the decision. Ms. Loney received the decision in a timely manner within a couple days of the February 2, 2017 mailing date. Ms. Loney did not take any steps to appeal the decision by the February 12, 2017 appeal deadline.

On February 28, 2017, Iowa Workforce Development mailed the February 28, 2017, reference 05, decision to Ms. Loney at her last known address of record. The decision held that Ms. Loney had been overpaid \$364.00 in benefits for the week that ended December 31, 2016, based on the earlier decision that disqualified her for benefits in connection with her voluntary

quit from TM Incorporated. The decision stated that an appeal from the decision must be postmarked by March 10, 2017 or received by the Appeals Section by that date. The back of the decision contained clear and concise instructions for filing an appeal from the decision. Ms. Loney received the decision in a timely manner within a couple days of the February 28, 2017 mail date. Ms. Loney did not take any steps to appeal the decision by the March 10, 2017 appeal deadline.

On or about March 29, 2017, Ms. Loney contacted Workforce Development with a question about the overpayment decision and was advised of the need to file an appeal. On March 29, 2017, Ms. Loney accessed the Workforce Development website and completed an online appeal from the reference 04 decision. The Appeals Bureau treated the appeal as an appeal from both of the decisions referenced above.

Subsequent to receiving the decisions, Ms. Loney misplaced the decisions. Ms. Loney speculates that her dogs may have at some point eaten the decisions.

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

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 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-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 871 AC 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 871 IAC 24.35(1)(b).

Ms. Loney's appeal from both decisions was filed on March 29, 2017. That was the date that Ms. Loney completed the online appeal and the date the Appeals Bureau received the 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 Ms. Loney did have a reasonable opportunity to file a timely appeal from each decision. Ms. Loney had received each decision within a couple days of the mailing date of the decision. Ms. Loney thereafter had several days in which to file an appeal by the appeal deadline. Ms. Loney elected not to file an appeal by the deadline. Ms. Loney waited until well after the appeal deadline for each decision had expired to contact Workforce Development and to file an 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. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). The February 2, 2017, reference 04, decision that disqualified Ms. Loney for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Loney voluntarily quit the employment on October 28, 2016 without good cause attributable to the employer, remains in effect.

**DECISION:**

The February 2, 2017, reference 04, decision is affirmed. The claimant's appeal from the decision was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that the claimant voluntarily quit the employment on October 28, 2016 without good cause attributable to the employer, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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