

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH M OLSON
Claimant

SAC & FOX TRIBE
Employer

APPEAL 19A-UI-08724-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/25/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – VQ – Voluntary quitting
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the September 16, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 2, 2019, at 3:00 p.m. Claimant participated. Employer participated through Joanne Youngbear, Chair of Sac & Fox Gaming Commission. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant filed a timely appeal.
Whether claimant's separation was a voluntary quit without good cause attributable to employer.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 117 West 4th Street, Gladbrook, Iowa on September 16, 2019. That was claimant's correct address at that time. Claimant does not recall when she received the decision. Mail from Des Moines, Iowa is typically received in Gladbrook, Iowa in two to three days. Claimant has no reason to believe that the decision was not received within two to three days of mailing.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 26, 2019. Claimant appealed the decision online on November 5, 2019. Claimant's appeal was received by Iowa Workforce Development on November 5, 2019. Claimant alleges that she did not file her appeal before the deadline because the Iowa Workforce Development employee who performed the fact-finding interview told her to reapply for benefits when her doctor released her to return to work. However, the employee did not tell claimant *not* to file an appeal.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(c) 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:

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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 division error or misinformation or to delay or other action of the United States postal service.

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 the appellant did have a reasonable opportunity to file a timely appeal.

Claimant received the decision prior to the appeal deadline. The appeal instructions on the unemployment insurance decision are clear. Claimant alleges that she did not file her appeal before the deadline due to information given to her by an Iowa Workforce Development employee. However, claimant does not allege that the employee told her *not* to file an appeal. Also, claimant received the unemployment insurance decision after the fact-finding interview. Claimant's delay was caused by her confusion and not due to agency error or misinformation or delay by the United States Postal Service. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The September 16, 2019 (reference 01) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

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