IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

OMAR SIBOMANA Claimant **REMEDY INTELLIGENT STAFFING INC** Employer	**APPEAL 22A-UI-01086-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/05/20** **Claimant: Appellant (2R)**

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

STATEMENT OF THE CASE:

The claimant/appellant, Omar Sibomana, filed an appeal from the August 2, 2021 (reference 03) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 3, 2022. The hearing was held together with Appeal 22A-UI-01087-JC-T.

The claimant participated personally through a Kinyarwanda interpreter (Alex, #143456) from CTS Language Link. Morami Shah also testified. The employer/respondent, Remedy Intelligent Staffing Inc., participated through Vicky Matthias.

The administrative law judge took official notice of the administrative records. Department Exhibits 1 and 2 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision

ISSUES:

Is the appeal timely?
Did the claimant quit by not reporting for an additional work assignment 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: Claimant established a claim for unemployment insurance benefits with an effective date of April 5, 2020. Employer is a temporary staffing firm. Claimant performed work on one assignment at R.S. Hanline from April 29, 2020 until June 7, 2020, when he was informed by the client site manager (Jeff) that the assignment (but not the employment) had ended. Employer stated it received reports claimant had been a no call/no show on June 3, 4, 5, 2020, which claimant denied. Employer reported claimant was eligible for a future assignment, after the Hanline assignment ended.

Employer stated that when claimant was hired, he was trained and signed off on the employer's reassignment policy, which requires an employee contact the employer within three business days of an assignment ending to request new assignment. Employer documents its contacts with employees within its internal database. Employer asserted that claimant did not request a new assignment or contact the employer again, and that Ms. Matthias contacted claimant on July 10, 2020 to offer a job, which he declined effective July 27, 2020. The issue of whether claimant refused a suitable offer of work has not yet been addressed by the Benefits Bureau.

Claimant stated he can understand some English but does not read or write English. He could not read any policies put before him to sign at the time of orientation and no translation assistance was provided. Claimant and Ms. Shah stated they carpooled and worked together from Anamosa, and that after the assignment ended, they drove to the employer office in Cedar Rapids, where they checked in with the secretary. (Claimant could not recall her name but provided a physical description.) Claimant stated he had last worked on a Friday and visited the employer's office the following Monday with Ms. Shah. He requested a new assignment and asked if he could have one that provided social distancing (due to COVID-19) rather than "shoulder to shoulder" work as he had previously done. He was told that jobs were low due to COVID-19 and he would be contacted if an assignment was available. Claimant stated he made several attempts to follow up but was not offered a position. Ms. Matthias does not work at the Cedar Rapids location in question for this case.

An initial unemployment insurance decision (Reference 03) denying benefits was mailed to claimant's last known address of record on August 2, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 12, 2021. Claimant moved in July 2021, and notified IWD of his address change in early September 2021. For unknown reasons, claimant did not receive the initial decisions in the mail until December 2021. Claimant filed his appeal on December 7, 2021 online (Department Exhibit 1). He filed a follow up appeal/second appeal on December 29, 2021 (Department Exhibit 2).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether claimant filed a timely appeal.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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

> Date of submission and extension of time for payments and notices.
> (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.
> 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 department 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, the division shall issue an appealable decision to the interested party.

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 claimant did not have an opportunity to appeal the initial decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within seven days of receipt. Therefore, the appeal shall be accepted as timely.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's June 7, 2020 separation from employment was attributable to the employer.

Iowa Code section 96.5(1)j provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 paragraph:
>
> (a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce 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(15) provides:

> Employee of temporary employment firm.
>
> a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.
>
> b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.
>
> c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.
>
> d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment."

The credible evidence presented is that claimant has limited English proficiency and that claimant was not trained on employer's reassignment policy upon hire in a manner that he could understand. The claimant's assignment ended on June 7, 2020. Claimant did contact the employer within three business days to request a new assignment. Accordingly, the claimant's

separation from employment is attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

The issues of whether claimant refused a suitable offer of work July 27, 2020, and was able and available for work are remanded to the Benefits Bureau for an initial investigation.

DECISION:

The August 2, 2021 (reference 03) initial decision is reversed. The appeal is timely. The claimant's June 7, 2020 separation was attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

The issues of whether claimant refused a suitable offer of work July 27, 2020, and was able and available for work are remanded to the Benefits Bureau for an initial investigation.

Jennifer L. Beckman
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February 23, 2022
Decision Dated and Mailed

jlb/mh