

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDI J HAMMOND
Claimant

APPEAL NO. 12A-UI-05864-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

OC: 02/19/12
Claimant: Appellant (1)

Section 96.1(d) – Voluntary Quit due to Non-Work-Related Medical Condition
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Brandi Hammond filed an appeal from the March 29, 2012, reference 01, decision that denied benefits based on an agency conclusion that she had voluntarily quit on January 18, 2012, due to a non-work-related medical condition. After due notice was issued, a hearing was started on June 12, 2012, but rescheduled to July 2, 2012, so that a companion case file could be opened and to satisfy statutory notice requirements. Ms. Hammond participated on June 12, 2012, but did not make herself available on July 2, 2012. Michelle Eastin represented the employer. Roxanne Smith, Workforce Advisor assigned to Creston Iowa Workforce Development Center, provided testimony. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-06810-JTT. Department Exhibits D-1, D-2, and D-3 were received into evidence.

ISSUE:

Whether Ms. Hammond's appeal from the March 29, 2012, reference 01, decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 29, 2012, Iowa Workforce Development mailed a copy of the March 29, 2012, reference 01, decision to Brandi Hammond's last known address of record. The decision denied benefits based on an agency conclusion that Ms. Hammond had voluntarily quit on January 18, 2012, due to a non-work-related medical condition. Ms. Hammond received the decision in a timely manner, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 8, 2012. The decision also indicated that if the deadline for appeal fell on a Saturday, Sunday, or legal holiday, the deadline would be extended to the next working day. April 8, 2012 was Easter Sunday and the next working day was Monday, April 9, 2012. Workforce Development offices were open on April 9, 2012.

On Saturday, May 19, 2012, Ms. Hammond submitted an appeal by fax to the Creston Workforce Development Center. The materials indicate they were faxed on that date from Graceland University. On Monday, May 21, 2012, the staff at the Creston Workforce Development Center faxed Ms. Hammond's appeal to the Appeals Section, which received the appeal the same day. The handwritten appeal letter bears a completion date of April 9, 2012.

On March 29, 2012, Workforce Development had also mailed a March 29, 2012, reference 04 decision to Ms. Hammond's address of record. That decision denied benefits effective February 19, 2012, based on an agency conclusion that Ms. Hammond was not able to work according to her physician. That decision also bore an April 8, 2012 deadline for appeal and the same information concerning extension of the deadline to the next working day if the deadline fell on a Saturday, Sunday, or legal holiday. Ms. Hammond received that decision in a timely manner prior to the deadline for appeal.

Ms. Hammond's appeal was intended to be an appeal from both the reference 01 and reference 04 decisions.

REASONING AND CONCLUSIONS OF LAW:

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-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).

The administrative law judge deems the appeal in this matter to have been submitted on May 19, 2012, when the Creston Workforce Development Center received the appeal by fax.

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 the appellant did have a reasonable opportunity to file a timely appeal. The April 9, 2012 completion date on the appeal letter indicates that Ms. Hammond had received the decisions in a timely deadline, prior to the deadline for appeal. Ms. Hammond filed her appeal more than a month after the appeal deadline had passed.

The administrative law judge concludes that the appellant's 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).

DECISION:

The Agency representative's March 29, 2012, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw