

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE HALLS

Claimant

APPEAL 20A-UI-14716-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE

Employer

OC: 04/05/20

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On November 10, 2020, the claimant filed an appeal from the July 9, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 14, 2021. Exhibits D-1, D-2 and A were admitted into the record.

ISSUES:

Whether the claimant filed a timely appeal? 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 July 9, 2020, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by July 19, 2020, or received by the Appeals Section on that date. The claimant's appeal was sent via email on November 10, 2020.

In the appeal hearing, the claimant said she received the representative's decision at some point in summer 2020. The claimant explained she spoke with an Iowa Workforce Development representative Mike (last name unknown) who told her that this regular unemployment claim was not likely to be successful and encouraged her to file a PUA claim. Mike (last name unknown) further explained that it would take weeks for the claimant's PUA claim to be approved.

At the time of the hearing, the claimant believed this appeal was regarding her PUA application. She did not appeal her regular unemployment compensation claim earlier because she believed PUA was the type of benefit that would best address her circumstances. The administrative record does not show the claimant has a PUA claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely and there is not good cause to treat the appeal as timely. The administrative law judge further concludes she does not have jurisdiction to rule on the issue regarding whether claimant quit with good cause attributable to the employer.

The preliminary issue in this case is whether the employer timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

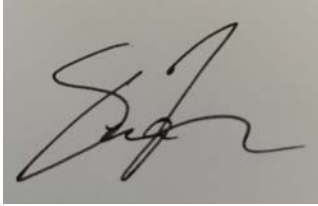
Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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 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 an appeal postmarked as timely.

The claimant missed the appeal deadline of her regular unemployment compensation claim by roughly three months. The claimant received the representative's decision at some point in the summer. As a result, the claimant did not provide any evidence that her appeal was delayed due to an error attributable to Iowa Workforce Development or the United States Postal Service. The administrative law judge concludes that claimant's failure to have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claim for unemployment insurance benefits.

DECISION:

The July 9, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily quit without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 1, 2021
Decision Dated and Mailed

smn/scn