

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**COLLEEN M FOLEY JACOBS**  
Claimant

**HY VEE INC**  
Employer

**APPEAL NO. 22A-UI-05667-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On March 3, 2022, Colleen Foley-Jacobs filed a late appeal from the March 22, 2021 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 3, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 14, 2022. Claimant participated. Barbara Buss of Corporate Cost Control represented the employer. Employer witness Danielle Grimm was available to testify, but did not testify. There were three appeal numbers set for a consolidated hearing: 22A-UI-05667-JT-T, 22A-UI-05669-JT-T, and 22A-UI-05671-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the reference 01, 02 and 03 decisions. The administrative law judge took official notice of the Agency administrative record of benefits paid to the claimant (DBRO, KPYX). The administrative law judge took official notice of the absence of the application for Pandemic Unemployment Assistance (PUA), the absence of a decision allowing PUA, and of the KPY1 record reflecting no PUA benefits were paid to the claimant.

**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 March 22, 2021, Iowa Workforce Development mailed the March 22, 2021, reference 01 decision to the claimant's last-known address of record. The reference 01 decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit her Hy-Vee employment on March 3, 2020 without good cause attributable to the employer. The reference 01 decision stated the decision would become final unless an appeal was postmarked by April 1, 2021 or was received by the Appeals Section by that date. The decision included clear and concise instructions for filing an appeal. The decision included a customer service telephone number

the claimant could call if she had questions about the decision. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal. The claimant erroneously concluded the decision regarding her separation from Hy-Vee was irrelevant to her circumstances. The claimant did not take steps to file an appeal from the decision by the April 1, 2021 appeal deadline or at any point prior to March 3, 2022.

On February 28, 2022 and March 1, 2022, Iowa Workforce Development mailed two overpayment decisions to the claimant. Both overpayment decisions were based on the March 22, 2021 disqualification decision. In response to the overpayment decisions, the claimant completed and transmitted an online appeal on March 3, 2022. The Appeals Bureau received the appeal on March 3, 2022 and treated it as also a late appeal from the reference 01 decision.

### **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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the March 22, 2021, reference 01, decision. The evidence establishes that the claimant received the reference 01 decision in a timely manner, had a reasonable opportunity to file an appeal by the April 1, 2021 appeal deadline, but unreasonably delayed filing the appeal to March 3, 2022. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the March 22, 2021, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the March 22, 2021 (reference 01) decision was untimely. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit the Hy-Vee employment on March 3, 2020 without good cause attributable to the employer, remains in effect.



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James E. Timberland  
Administrative Law Judge

April 20, 2022  
Decision Dated and Mailed

jet/kmj