

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA H PHAM
Claimant

APPEAL NO. 17A-UI-10448-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGIS CORP
Employer

OC: 09/18/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Lisa Pham filed an appeal from the September 14, 2017, reference 08, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Pham voluntarily quit effective July 24, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 31, 2017. Ms. Pham participated. David Williams of Equifax Workforce Solutions represented the employer and presented testimony through Elizabeth Knox and Helen Eggenberger. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-10449-JTT. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBIN, DBRO, WAGE-B.

ISSUE:

Whether Ms. Pham's appeal from the September 14, 2017, reference 08, decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa Pham established an original claim for benefits that was effective September 18, 2016. That claim year began September 18, 2016 and ended September 16, 2017. In February 2017, Ms. Pham reached her maximum benefit amount for the claim year and was not eligible for additional unemployment insurance benefits for the remainder of the claim year. Nonetheless, Ms. Pham established an additional claim for benefits that was effective August 27, 2017.

On September 14, 2017, Iowa Workforce Development mailed a copy of the September 14, 2017, reference 08, decision to Ms. Pham at her last known address of record. The decision was based on the claim year that began September 18, 2016. The decision was mailed from Iowa Workforce Development in Des Moines to Ms. Pham's home in West Des Moines. The September 14, 2017, reference 08, decision disqualified Ms. Pham for unemployment insurance

benefits and relieved the Regis Corporation's employer account of liability for benefits, based on the claims deputy's conclusion that Ms. Pham voluntarily quit employment with Regis Corporation effective July 24, 2017 without good cause attributable to the employer. The September 14, 2017, reference 08, decision included a warning that an appeal from the decision must be postmarked by September 24, 2017 or be received by the Appeals Bureau by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. September 24, 2017 was a Sunday and the next working day was Monday, September 25, 2017. Ms. Pham received the September 14, 2017, reference 08, decision in a timely manner, prior to the deadline for appeal. Ms. Pham did not take any steps to file an appeal by the September 25, 2017 extended appeal deadline. Instead, Ms. Pham filed a new application for benefits to establish a new claim year effective September 17, 2017.

On September 27, 2017, after Ms. Pham established her new claim year, Workforce Development mailed a copy of the September 27, 2017, reference 01, decision to Ms. Pham's address of record. The reference 01 decision was based on the new claim year that started September 17, 2017. The decision contained an October 7, 2017 deadline for appeal. The decision disqualified Ms. Pham for benefits in connection with the new claim year, based on the agency's conclusion that the disqualification decision entered in connection with the prior claim year remained in effect during the new claim year. On October 2, 2017, Ms. Pham went to the Des Moines Workforce Development Center and completed an appeal form regarding the September 27, 2017, reference 01, decision. On October 2, 2017, Ms. Pham delivered the completed appeal form to a Workforce Development representative at the Des Moines Workforce Development Center. The Appeals Bureau received the appeal on October 13, 2017 and treated it as an appeal from both disqualification 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, 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 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 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 evidence in the record shows that Ms. Pham had a reasonable opportunity to file an appeal from the September 14, 2017, reference 08, decision by the September 25, 2017 appeal deadline, but did not take steps to file an appeal by the deadline. Instead, Ms. Pham established a new claim year and did not take any steps to file an appeal until October 2, 2017, when she completed an appeal from the subsequent decision and delivered the completed appeal to the Workforce Development representative. Ms. Pham's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late appeal from the September 14, 2017, reference 08, decision as a timely appeal. See Iowa Admin. Code r. 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the September 14, 2017, reference 08, 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 September 14, 2017, reference 08, decision is affirmed. The claimant's appeal from the decision was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that the claimant voluntarily quit effective July 24, 2017 without good cause attributable to the employer, remains in effect.

In the event this decision regarding timeliness of the appeal is reversed on further appeal, there is sufficient evidence in the record to enter a decision regarding the separation without need for further hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs