

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JORDAN B ANTONINI
Claimant

VITAMIN COTTAGE NATURAL FOOD MKT
Employer

APPEAL NO. 21A-UI-17597-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Jordan Antonini, filed a late appeal from the October 2, 2020, reference 02, decision that disqualified him 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 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 5, 2021. The claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-17598-JT-T. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBIN, KCCO, KPYX, NMRO, KLOG, WAGE-A, the October 2, 2020, reference 02, decision, and the December 1, 2020, reference 03, decision.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:
The claimant, Jordan Antonini, was employed by Vitamin Cottage Natural Food Market as a full-time grocery manager from July 2019 and last performed work for the employer on or about February 28, 2020. Toward the end of the employment, the claimant experienced shoulder pain and tightness that prompted him to go off work. A doctor kept the claimant off work for a week. The claimant's doctor offered no opinion as to whether the claimant's shoulder pain was work related. The claimant returned to work on or about February 28, 2020. The claimant worked for a couple hours, again felt pain in his shoulders, and again went off work. The claimant's decision to go off work on February 28, 2020 was not pursuant to the recommendation of a doctor. The claimant had decided on his own that he could not perform the work to the employer's standards. The claimant did not return to the employment. The claimant had not accepted other employment.

The claimant established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$331.00. The claimant made weekly claims for each of the 23 weeks between March 15, 2020 and August 22, 2020 and received \$331.00 in regular benefits for each of those weeks.

At the time the claimant established the March 15, 2020 original claim, he resided in an apartment on Tucker Street in Hiawatha. The claimant provided Iowa Workforce Development the Tucker Street address when he set up his claim for benefits.

The claimant moved from the Tucker Street address in September 2020, after he discontinued making weekly claims. The claimant moved to his parents' home in Palo. When the claimant moved, he did not contact Iowa Workforce Development to update his mailing address and did not contact the United States Postal Service to have his mail forwarded to the Palo address.

On October 2, 2020, Iowa Workforce Development mailed the October 2, 2020, reference 02, decision to the claimant's Hiawatha last-known address of record. The reference 02 decision disqualified the claimant for unemployment insurance benefits and held the employer account of Vitamin Cottage Natural Food Market would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit the employment on March 3, 2020 without good cause attributable to the employer. The reference 02 decision stated that the decision would become final unless an appeal was postmarked by October 12, 2020 or was received by the Appeal Section by that date.

On December 1, 2020, Iowa Workforce Development mailed the December 1, 2020, reference 03, decision to the claimant's Hiawatha last-known address of record. The reference 03 decision held the claimant was overpaid \$7,613.00 in regular benefits for 23 weeks between March 15, 2020 and August 22, 2020, due to the earlier decision that disqualified the claimant for benefits based on his voluntary quit from Vitamin Cottage Natural Food Market. The reference 03 decision stated that the decision would become final unless an appeal was postmarked by December 11, 2020 or received by the Appeal Section by that date.

The claimant did not receive either of the above-referenced decisions because he had not updated his address of record with Iowa Workforce Development and had not requested the United States Postal Service forward his mail to the Palo address. The claimant did not file an appeal from either decision by the respective appeal deadlines.

On April 21, 2021, the claimant contacted Iowa Workforce Development to request a duplicate 1099-G tax form so he could file his 2020 tax return. At that time, the claimant updated his address to the Palo address.

On August 10, 2021, the claimant sent an email message to the Appeals Bureau to appeal from an unspecified overpayment decision. The claimant stated that he had "recently" received notice of the overpayment determination. The claimant stated that he had moved and did not receive mail from Iowa Workforce Development.

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 appeal was filed on August 10, 2021, when the Appeals Bureau received the emailed appeal.

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).

The evidence establishes an untimely appeal from the October 2, 2020, reference 02, decision. The late filing of the appeal was solely attributable to the claimant. The claimant did not receive the decision because he unreasonably failed to update his address of record with IWD and failed to request that the United States Postal Service forward his mail to his new address. The claimant denied himself reasonable opportunity to receive and respond to the reference 02 decision in a timely manner. The failure to update the address with IWD or request the USPS forward mail was a months-long issue that resulted in the claimant not receiving the reference 02 decision, the December 1, 2020, reference 03, or the 1099-G tax form that was mailed in 2021. The late filing of the appeal was not attributable to IWD or to the USPS. Accordingly, 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, the administrative law judge lacks jurisdiction to disturb the decision from which the claimant appealed. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Even if the evidence had established a timely appeal, the evidence in the record would have established a voluntary quit without good cause attributable to the employer.

Iowa Code section 96.5(1)(d) 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made

it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Even if the evidence had established a timely appeal, the claimant presented insufficient evidence to establish that it was medically necessary to separate from the employment. In addition, the evidence indicates that voluntary quit was not based on advice from a licensed and practicing physician. Thus, even if the evidence had indicated a timely appeal, the evidence would also indicate a voluntary quit that disqualifies the claimant for unemployment insurance benefits.

DECISION:

The claimant's appeal from the October 2, 2020, reference 02, decision was untimely. Even if the appeal had been timely, the reference 02 decision would be affirmed, since the evidence indicate a voluntary quit without good cause attributable to the employer. The decision that disqualified the claimant until he works in and is paid wages for insured work equal to 10 times his weekly benefit amount remains in effect. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

November 29, 2021
Decision Dated and Mailed

jet/kmj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do

not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.