

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TREVOR A NEVE**  
Claimant

**COURTESY CORPORATION**  
Employer

**APPEAL 22A-UI-06651-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On March 17, 2022, Trevor Neve (claimant/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated March 5, 2021 (reference 03) that denied unemployment insurance benefits based on a finding that claimant voluntarily quit work on February 13, 2020 for personal reasons.

A telephone hearing was held on May 13, 2022. Appeal Nos. 22A-UI-06651-AD-T, 22A-UI-06656-AD-T, 22A-UI-06657-AD-T, and 22A-UI-06658-AD-T were related and heard together, forming a single hearing record. The parties were properly notified of the hearing. Claimant participated personally. Courtesy Corporation (employer/respondent) did not appear or participate. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Was there a disqualifying separation from employment?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer in 2019. Claimant resigned effective February 13, 2020 to accept work elsewhere. Claimant did perform work in that new position.

The Unemployment Insurance Decision was mailed to claimant at the above address on March 5, 2021. That was claimant’s correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 15, 2021. The delay in appealing was due to claimant never receiving the decision. Claimant was prompted to appeal when she received overpayment decisions in March 2022.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The decision dated March 5, 2021 (reference 03) that denied unemployment insurance benefits based on a finding that claimant voluntarily quit work on February 13, 2020 for personal reasons is REVERSED.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.
  - (b)
  - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service."

The record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code section 96.5(1) 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant began working for employer in 2019. Claimant resigned effective February 13, 2020 to accept work elsewhere. Claimant did perform work in that new position. Claimant is therefore not disqualified from benefits and employer's account shall not be charged.

**DECISION:**

The administrative law judge concludes the claimant's appeal was timely. The decision dated March 5, 2021 (reference 03) that denied unemployment insurance benefits based on a finding that claimant voluntarily quit work on February 13, 2020 for personal reasons is REVERSED. The separation from employment was not disqualifying and employer's account shall not be charged.



---

Andrew B. Duffelmeyer  
Administrative Law Judge

May 17, 2022  
Decision Dated and Mailed

abd/abd