

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRIAN E MCDANIEL**  
Claimant

**1ST CLASS STAFFING LLC**  
Employer

**APPEAL NO. 18A-UI-04854-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/18/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment  
Iowa Code § 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 10, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and begun on May 14, 2018. After noticing that a potential issue had not been given proper notice, this matter was continued to June 11, 2018. Claimant participated personally and with attorney Leonard Bates. Employer participated by Misty Moline and Krista Engelbarts. Claimant's Exhibits A-B and Employer's Exhibits 1-3 were admitted into evidence.

**ISSUES:**

Whether the appeal is timely?

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

Claimant was mailed his Unemployment Insurance Decision on April 10, 2018. On the same date that the decision was mailed, claimant called IWD customer service at 866-239-0843. Claimant said he called after receiving the decision. Claimant stated that in his call he did not ask how to file an appeal of the decision, and the IWD worker explained he needed to wait to find out any dates.

Claimant then went on to try to hire an attorney as claimant has difficulties in reading and understanding some of the issues he was facing. Claimant did hire an attorney after speaking with multiple attorneys who wanted up-front fees. Claimant's hiring of his attorney occurred on or around May 23, 2018. Said attorney then filed the appeal on May 24, 2018.

Claimant worked for employer from August 28, 2017 through March 16, 2018 and was placed with XPO Logistics throughout his employment. Claimant had missed days with XPO, but informed his placement and 1st Class Staffing of his need to be out-of-town for a family issue on March 16. He notified his placement in advance of his leaving and was not told that this would put his job in jeopardy.

On March 16, 2018, claimant was called by his employer to state that he was no longer going to be placed with XPO as they'd dismissed him. Employer stated that claimant had missed the entire week ending on March 16, 2018. Claimant then showed that in fact he'd worked the entire week up until Friday when he was leaving on his planned trip. Employer stated claimant had not been in touch with them about the trip; claimant stated he had.

When employer called up claimant on March 16, 2018, employer stated claimant made no request for additional placement. Claimant stated that this was not true and further stated that employer told him that another person would be in contact with claimant about additional job opportunities. Claimant stated when no one had been in contact with him for two weeks after the call on March 16, 2018, he then called employer to find that there were no opportunities available that fit his parameters.

#### **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 calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant did receive his decision, although it remains a mystery how he could have received the decision on the same day it was mailed. When claimant did call IWD, he made no statement about his wishes to file an appeal to the fact-finder's decision. He then did not get an appeal filed until after more than ten days had run.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). Whereas the claimant certainly may have a valid claim regarding the separation issue, the administrative law judge is precluded from that analysis because of the lack of timely filing.

**DECISION:**

The April 10, 2018, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn