

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO H RAMOS
Claimant

APPEAL NO. 13A-UI-12279-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TR CONSTRUCTION
Employer

OC: 03/10/13
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated September 16, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 25, 2103. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Julio Ramos and Claimant's Exhibit A. Official notice is taken of agency records.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On September 16, 2013, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by September 26, 2013, or received by the Appeals Section on that date. The claimant's appeal was filed on November 1, 2013. An envelope from Iowa Workforce Development is postmarked on October 29, 2013.

The claimant did resign his position with TR Construction on or about August 21, 2013. The claimant left his position to take a job with the Weitz Company. The claimant actually worked for Weitz and earned \$3228.76, which represents 619.92 regular hours. He also worked one hour of overtime for a total of \$38.75. He was then laid off by Weitz.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins 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 871 IAC 26.2(96)(1) and 871 IAC 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 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 not have a reasonable opportunity to file an appeal postmarked as timely.

The administrative law judge concludes that failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2) or agency error. The claimant's appeal will be deemed timely.

The claimant is eligible for unemployment insurance benefits. The claimant credibly testified and provided written proof that he left the employer to accept work with another employer. His pay stubs show that he did perform insured work. He also credibly testified that he left because he could earn more money with Weitz. Under these circumstances, benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund.

DECISION:

The claimant's appeal is deemed timely. Unemployment insurance benefits are allowed if the claimant is otherwise eligible. Benefits relating to wage credits earned with the employer the claimant has left shall be charged to the unemployment compensation fund.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs