

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TYRAY D SMITH
Claimant

TWIN CITY TANNING WATERLOO LLC
Employer

APPEAL NO. 21A-UI-10268-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
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, Tyray Smith, filed a late appeal from the March 25, 2021, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 11, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 15, 2021. Claimant participated. Scott Simcox represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the March 25, 2021, reference 03, decision.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On March 25, 2021, Iowa Workforce Development mailed the March 25, 2021, reference 03 decision to the claimant's Waterloo last-known address of record. The decision disqualified the claimant for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 11, 2020 without good cause attributable to the employer. The decision stated that the decision would become final unless an appeal was filed by April 4, 2021 or was received by the Appeals Section by that date. The reference 03 decision was delivered to the address of record in a timely manner, prior to the deadline for appeal. The claimant's address of record is his aunt's and grandmother's home in Waterloo. In January 2021, the claimant discontinued residing at with aunt and grandmother and commenced residing with his significant other at a different address. The claimant did not update his address of record with Iowa Workforce Development. The claimant did not completed a mailed forwarding request with the United States Postal Service. Instead, the claimant would have his aunt and grandmother accumulated his mail. After a bundle of mail would accumulate, the claimant's aunt or grandmother contact the claimant and make arrangements to get the bundle of mail to the claimant. On April 9, 2021, the claimant collected a bundle of mail that included the March 25, 2021, reference 03, decision. On April 10, 2021,

the claimant filed an online appeal from the reference 03 decision. The Appeals Bureau received the appeal on April 10, 2021.

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 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 March 25, 2021, reference 03, disqualification decision. The evidence established that the decision was delivered in a timely manner to the last-known address of record provided by the claimant. The claimant failed to take reasonable steps to update his address with Iowa Workforce Development, failed to take reasonable steps to have the United States Postal Service forward his mail, and failed to take reasonable and timely steps to monitor, retrieve, and respond to the mail the claimant had directed to his aunt's and grandmother's home. The weight of the evidence establishes the claimant had reasonable opportunity to file an appeal by the April 4, 2021 deadline. The late filing of the appeal on April 10, 2021 was attributable to the claimant and was not attributable to Iowa Workforce Development or to the United States Postal Service. 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 claimant failed to preserve his right to challenge the decision and the administrative law judge lacks jurisdiction to disturb the decision that disqualified the claimant for unemployment insurance benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the March 25, 2021, reference 03, 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 deputy's conclusion that the claimant voluntarily quit on February 11, 2020 without good cause attributable to the employer, remains in effect.

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



James E. Timberland
Administrative Law Judge

July 29, 2021
Decision Dated and Mailed

jet/lj