

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DENNIS WILLARD**  
Claimant

**SEDONA STAFFING INC**  
Employer

**APPEAL 20A-UI-16146-JTT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/12/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a late appeal from the September 24, 2020, reference 01, decision that disqualified him for benefits and that held the employer's account could not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on January 17, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 1, 2021. Claimant participated personally and was represented by attorney Connor Mulholland. Colleen McGuinty represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KFFV (scheduled reference 01 fact-finding interview) and NMRO (regarding the reference 01 through reference 05 decisions).

**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: Dennis Willard established an original claim for benefits that was effective July 12, 2020. At the time Mr. Willard established the original claim, he provided a Hinkeyville address. Hinkeyville is a small unincorporated community located along the Cedar River in northern Muscatine County. It is actually a Mr. Willard advises that he is dyslexic and that he sometimes transposes numbers. When Mr. Willard established his claim for benefits, he may or may not have provided the correct house number. The street Mr. Willard lives on is West Hinkeyville Drive, otherwise known as Hinkeyville W. Mr. Willard lives in the 1200 block of Hinkeyville W. Mr. Willard has at various times provided Iowa Workforce Development with three different house numbers corresponding that that same 1200 block of Hinkeyville W. For purposes of receiving mail, the Hinkeyville area shares the Atalissa town name and zip code. Mr. Willard has lived in Hinkeyville for 40 years and is well-known in that area. Despite any erroneous digits in the house number provided by Mr. Willard, Mr. Willard is routinely able to receive his mail and the United States Postal Service is routinely able to deliver Mr. Willard's mail to him.

On September 22, 2020, Mr. Willard participated in a telephonic fact-finding interview that addressed his January 2020 separation from Sedona Staffing. On September 24, 2020, Iowa Workforce Development mailed the September 24, 2020, reference 01, decision to Mr. Willard at the last-known address of record provided by Mr. Willard at the time he established his claim for benefits. The decision reference 01 decision disqualified Mr. Willard for unemployment insurance benefits, based on the deputy's conclusion that Mr. Willard had voluntarily quit work with Sedona Staffing on January 17, 2020 without good cause attributable to that employer. The reference 01 decision stated that it would become final unless an appeal was postmarked by October 4, 2020 or received by the IWD Appeal Section by that date. The weight of the evidence establishes that Mr. Willard received the reference 01 decision in a timely manner, prior to the deadline for appeal. Mr. Willard does not remember the exact date he received the decision, but concedes it was no more than 10 days after the mailing date. Later in September, Iowa Workforce Development mailed two more decisions to Mr. Willard. Mr. Willard received those decisions in a timely manner. One of those additional decisions was a summary decision that acknowledged multiple decisions had been entered in connection with the claim and that reaffirmed the disqualification for benefits arising from the reference 01 decision. Mr. Willard did not take any steps to file an appeal from the reference 01 decision by the October 4, 2020 deadline or at any time prior to December 2, 2020.

On November 17, 2020, IWD mailed a reference 04 decision to Mr. Willard. Mr. Willard received the decision in a timely manner. The reference 04 decision addressed Mr. Willard's October 14, 2019 separation from Industrial Packaging Corporation. The decision that that Mr. Willard had earned 10 times he weekly benefit amount subsequent to separating from Industrial Packaging and was therefore eligible for benefits, provided he met all other eligibility requirements. Receipt of November 17, 2020 decision prompted Mr. Willard to finally file an appeal from the earlier disqualification decisions, including the September 24, 2020, reference 01. Mr. Willard asserts that an IWD representative told him he had to wait until every possible decision was entered in connection with his claim before he could file an appeal. No IWD representative would utter such words or convey such meaning. Mr. Willard drafted and mailed an appeal. The appeal letter is undated. The envelope in which the appeal was mailed bears a December 2, 2020 postmark. Mr. Willard erroneously directed his appeal to Iowa Workforce Development "Unemployment Insurance Benefits." The Unemployment Insurance Service Center (Benefits Bureau) received the appeal on December 7, 2020 and forwarded the appeal to the Appeals Bureau. The Appeals Bureau received the appeal on December 7, 2020 and docketed a December 2, 2020 appeal.

## **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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. Iowa Administrative Code rule 871-24.35(2)(c).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and

experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The evidence in the record establishes an untimely appeal. The weight of the evidence establishes that Mr. Willard received the September 24, 2020, reference 01, decision in a timely manner, prior to the deadline for appeal, despite any issue with the house number provided by Mr. Willard. The weight of the evidence establishes that Mr. Willard had a reasonable opportunity to file an appeal by the October 4, 2020 appeal deadline. Mr. Willard testified he received the reference 01 decision when it was mailed to him in September 2020. Mr. Willard testified that while he could not provide the exact date of receipt, he knew it was not more 10 days following the mailing date of the decision. Mr. Willard testified to his exceptionally long residence in the small unincorporated community and to the United States Postal Service getting his mail to him despite any issues with the particular house number. Even if one were to assume for the sake of argument that Mr. Willard received the decision as late as 10 days after the mailing date of the decision, delaying an appeal for almost two months until December 2, 2020 involved unreasonable delay. Mr. Willard's assertion that an IWD representative told him he had to wait until every possible decision was entered in connection with his claim before he could file an appeal is completely baseless, completely contrary to the law and Agency practices, and wholly without merit. The delay in filing the appeal was attributable to Mr. Willard's election to delay action on the matter until after he received the November 17, 2020, reference 04, decision. Mr. Willard presented insufficient evidence to established disability issues that deprived him on a reasonable opportunity to file a timely appeal. The delay in filing the appeal was not caused by IWD or by the United States Postal Service. There is no 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 September 24, 2020, reference 01, decision. 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 was untimely. The September 24, 2020, reference 01, decision that disqualified the claimant 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 on January 17, 2020 without good cause attributable to the employer, remains in effect.



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James E. Timberland  
Administrative Law Judge

February 18, 2021  
Decision Dated and Mailed

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**