

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLENE K RITTER
Claimant

APPEAL NO. 14A-UI-02840-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 02/24/13
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(j) – Voluntary Quit from Temporary Employment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Kellene Ritter filed an appeal from the February 13, 2014, reference 09, decision that disqualified her for benefits based on an agency conclusion that she had voluntarily quit employment with Advance Services, Inc., effective December 24, 2013, without good cause attributable to that employer. After due notice was issued, a hearing was held on April 7, 2014. The hearing was consolidated with the hearing in Appeal Number 14A-UI-02841-JTT. Ms. Ritter participated. Michael Payne represented the employer. Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUE:

Whether the appeal from the February 13, 2014, reference 09, decision was timely. Whether there is good cause to treat the appeal from that decision as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 13, 2014, Iowa Workforce Development mailed a copy of the February 13, 2014, reference 09, decision to Kellene Ritter's last-known address of record. The decision was entered in connection with a claim year that had begun on February 24, 2013. The decision disqualified Ms. Ritter for benefits based on an agency conclusion that she had voluntarily quit employment with Advance Services, Inc., effective December 24, 2013, without good cause attributable to that employer. The decision contained a warning that an appeal from the decision must be postmarked by February 23, 2014 or that the Appeals Section must receive the appeal by that date. The decision contained instructions for appeal and a telephone number Ms. Ritter could call if she had an questions about the decision. Ms. Ritter received the decision in a timely manner, on or about February 15 or 16, 2014. Ms. Ritter did not take any steps to appeal the decision by the February 24, 2014 deadline.

On February 4, 2014, and again on February 11, 2014, Iowa Workforce Development sent Ms. Ritter a letter warning her that her claim year was about to expire on February 22, 2014 and that she would need to establish a new claim if she wished to claim benefits beyond that date.

The two letters about the expiration of the claim year made no reference to the February 13, 2014, decision that disqualified Ms. Ritter for benefits. The February 4 and February 11 correspondence each contained a telephone number and an email address that Ms. Ritter could use if she had any questions about the correspondence.

Ms. Ritter established a new claim year that was deemed effective February 23, 2014. On March 7, 2014, Iowa Workforce Development mailed a copy of the March 7, 2014, reference 01, decision to Ms. Ritter's last-known address of record. That decision was based on the claim year that was effective February 23, 2014. The decision disqualified Ms. Ritter for unemployment insurance benefits based on an agency conclusion that Ms. Ritter's December 24, 2013 separation from ASI had been adjudicated as part of the prior claim and that the prior decision continued to be in effect. Ms. Ritter received the March 7, 2014, reference 01, decision on March 10, 2014. On March 13, 2014, Ms. Ritter completed an appeal form and mailed the appeal form. This represented Ms. Ritter's first steps, and first contact with Iowa Workforce Development, to file an appeal since she had received the February 13, 2014, reference 09, decision. Ms. Ritter's mailed appeal is postmarked March 13, 2014.

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, subsection 10, 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 871 AC 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 871 IAC 24.35(1)(b).

Ms. Ritter's mailed appeal was filed on March 13, 2014, the postmark date on the envelope in which the appeal was mailed.

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 appeal deadline that applied to the February 13, 2013, reference 09, decision was February 23, 2014. Ms. Ritter filed her appeal 18 days beyond that deadline.

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. Ms. Ritter had received the February 13, 2014, reference 09, decision on or before February 16, 2014 and at that point had at least a week in which to file a timely appeal.

The administrative law judge concludes that Ms. Ritter's failure to file a timely appeal from the February 13, 2014, reference 09, decision within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Nothing in the correspondence sent to Ms. Ritter regarding the expiration of her claim year suggested that she did not need to file an appeal from the decision that disqualified her benefits. If Ms. Ritter had questions about the meaning of the decision or other correspondence, she took no reasonable steps to get additional information from Workforce Development. The administrative law judge further concludes that the appeal from the February 13, 2014, reference 09, decision was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb that 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 Claims Deputy's February 13, 2014, reference 09, decision is affirmed. The appeal in this case was not timely, and the decision that disqualified the claimant for benefits based on the December 24, 2013 separation from Advance Services, Inc., remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css