

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TIMOTHY CLAY**  
Claimant

**TEXAS ROADHOUSE HOLDINGS LLC**  
Employer

**APPEAL 20A-UI-08329-AD-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

On July 13, 2020, Timothy Clay (claimant/appellant) filed an appeal from the June 24, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on March 24, 2020 for personal reasons.

A telephone hearing was held on September 16, 2020. The parties were properly notified of the hearing. Claimant participated personally. Employer did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the appeal timely?
- II. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

The Unemployment Insurance Decision was mailed to claimant at the above address on June 24, 2020. That was claimant's correct address on that date. Claimant does not know if or when he received the decision.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 4, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. The

deadline to appeal was therefore extended to July 6, 2020. Claimant appealed the decision online on July 13, 2020.

The reason for the delay in the appeal was because claimant moved to another state without updating his address with the department and due to misinformation from the department. Claimant did not update his address because he did not plan to be out of state for an extended period of time. Claimant did regularly call in to the department to request the status of the decision. Claimant received varying responses when he called in on July 1, 3, and 10. It was not until he called in on July 13 that he learned he had been denied. Claimant immediately filed an appeal on that date.

Claimant began working for employer most recently in December 2018. Claimant has worked for employer off and on for 12 years. Claimant frequently travels and so has on several occasions quit working for employer to travel and then will return and be re-hired. Claimant quit most recently on February 24, 2020 to travel to Florida, in part to pursue an employment opportunity there. He planned to return to Iowa in early April and begin working for employer again at that time. However, due to the pandemic, claimant's employment opportunity in Florida fell through after just one or two days of work. He did not feel it was safe or economically advantageous for him to return to Iowa at that time, as he did not expect employer would have work available for him and he was able to stay in Florida rent free. He has therefore remained in Florida since that time.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The June 24, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on March 24, 2020 for personal reasons is REVERSED. The administrative law judge finds claimant voluntarily resigned to pursue other or better employment, which he did accept and perform services in. Claimant is therefore not disqualified from benefits and employer's account shall not be charged.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.
  - (b)
  - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or

regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service."

The reason for the delay in the appeal was because claimant moved to another state without updating his address with the department and due to misinformation from the department. Claimant did not update his address because he did not plan to be out of state for an extended period of time. Claimant did regularly call in to the department to request the status of the decision. Claimant received varying responses when he called in on July 1, 3, and 10. It was not until he called in on July 13 that he learned he had been denied. Claimant immediately filed an appeal on that date.

Claimant's decision not to update his address is understandable, given his intention was to be in Florida temporarily. Claimant was diligent in following up on the status of his claim but did not receive complete and/or accurate information from the department. This is what ultimately caused the delay in the appeal. Claimant acted quickly to appeal once he learned the decision was not favorable to him. The administrative law judge finds there exists good cause for the lateness of the appeal and the appeal is therefore timely. The administrative law judge accordingly has jurisdiction to address the merits of the case.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:


a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This

paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant resigned to accept other or better employment, which he did accept and perform services in. Therefore, claimant is not disqualified from benefits and employer shall not be charged.

**DECISION:**

Claimant's appeal was timely. The June 24, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant voluntarily quit work on March 24, 2020 for personal reasons is REVERSED. The administrative law judge finds claimant voluntarily resigned to pursue other or better employment, which he did accept and perform services in. Claimant is therefore not disqualified from benefits and employer's account shall not be charged.



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Andrew B. Duffelmeyer  
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September 22, 2020  
Decision Dated and Mailed

abd/scn