

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**LOUIS R KLINGENBERG**  
Claimant

**MATERIAL MANAGEMENT GROUP INC  
BOSSARD NORTH AMERICA**  
Employer

**APPEAL NO. 20A-UI-14507-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**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 filed a late appeal from the April 30, 2020 (reference 02) decision that disqualified the claimant for unemployment insurance benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 25, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 12, 2021. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 20A-UI-14508-JTT and 20A-UI-14509-JTT. Exhibit A, the online appeal, and Exhibit B, the May 14, 2020 notice/decision regarding FPUC benefits, were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KCCO, NMRO, the March 27, 2020 (reference 01) decision, the April 30, 2020 (reference 02) decision, the October 27, 2020 (reference 03) decision, and the November 2, 2020 (reference 04) 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: The claimant established an original claim for benefits that was effective March 15, 2020.

On March 27, 2020, Iowa Workforce Development mailed the March 27, 2020 (reference 01) decision to the claimant that allowed benefits, provided the claimant met all other eligibility requirements, based on the deputy's conclusion that the claimant earned wages equal to 10 times his weekly benefit amount following his July 1, 2019 disqualifying separation from Martin Bros.

On April 30, 2020, IWD mailed the April 30, 2020 (reference 02) decision to the claimant's last-known address of record. The reference 02 decision disqualified the claimant for

unemployment insurance benefits, based on the deputy's conclusion that the claimant voluntarily quit employment with Material Management Group, Inc. on March 25, 2020 without good cause attributable to the employer. The reference 02 decision stated that the decision would become final unless an appeal from the decision was postmarked by May 10, 2020 or received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal period would be extended to the next working day. May 10, 2020 was a Sunday and the next working day was Monday, May 11, 2020. The reference 02 decision included clear and concise instructions for appeal, along with a toll-free customer service phone number and a toll-free phone number for the Appeals Bureau. The claimant received the reference 02 decision in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal from the reference 02 decision by the extended May 11, 2020 appeal deadline.

The claimant made weekly claims for each of the weeks between March 15, 2020 and May 9, 2020. The claimant received regular benefits on a weekly basis until the last payment was initiated on April 27, 2020. Thereafter, IWD discontinued benefits in response to the April 30, 2020 (reference 02) that disqualified the claimant for benefits.

When the benefits stopped, the claimant made two attempts to call the IWD customer service number, was unable to speak with someone in connection with those attempts, and abandoned his attempt to reach IWD to discuss discontinuation of benefits. The claimant moved on without taking action to appeal the April 30, 2020 (reference 02) disqualification decision. The claimant had continued to work in another employment at Key West Tanning, L.L.C. and began new employment with Target during the second quarter of 2020. Though the claimant asserts he made some additional application for unemployment benefits, IWD records do not support that assertion.

On May 14, 2020, IWD mailed a generic notice/decision to the claimant regarding conditional eligibility for Federal Pandemic Unemployment Compensation (FPUC). The decision stated that the eligibility for FPUC benefits was conditioned on the claimant's eligibility for regular benefits or eligibility for benefits under one of the listed state or federal programs that functions as a substitute for regular benefits.

On October 27, 2020, IWD mailed the October 27, 2020 (reference 03) decision to the claimant. The reference 03 decision stated that the claimant was overpaid \$1,700.00 in regular benefits for the period of March 22, 2020, based on the decision that disqualified the claimant in connection with his voluntary quit from Material Management Group, Inc.

On November 2, 2020, IWD mailed the November 2, 2020 (reference 04) decision to the claimant. The reference 04 decision stated that the claimant was overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation (FPUC) for the four weeks between March 29, 2020 and April 25, 2020, based on the reference 02 decision concerning his voluntary quit from Material Management Group, Inc.

On November 4, 2020, the claimant completed an online appeal from the November 2, 2020 (reference 04) FPUC overpayment decision. The Appeals Bureau received the appeal on November 4, 2020 and treated the appeal as also an appeal from the April 30, 2020 (reference 02) disqualification decision and the October 27, 2020 (reference 03) overpayment decision.

## 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 in the record establishes an untimely appeal from the April 30, 2020 (reference 02) disqualification decision. The claimant received the decision in a timely manner, has a reasonable opportunity to file an appeal by the extended May 11, 2020 appeal deadline, but did not elect not to file an appeal by that deadline. The decision contained clear and concise instructions for filing an appeal. Multiple means for filing an appeal were readily available to the claimant. The claimant's assertions that he was unable to speak with an IWD representative in connection with two attempts to contact the Agency at unspecified points, does not provide good cause for failure to file an appeal by the May 11, 2020 deadline. At the same time the claimant asserts he was unable to contact the Agency, literally thousands of claimants were able to make meaningful contact with the Agency on a daily basis. Even if the absence of telephone contact with the Agency had provided good cause for not filing an appeal by the May 11, 2020 deadline, this would not provide good cause to treat an appeal filed on November 4, 2020 as a timely appeal from an April 30, 2020 decision with a May 11, 2020 appeal deadline. 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. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence establishes that the late filing of the appeal was attributable to the claimant and not attributable to IWD 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 administrative law judge lacks jurisdiction to disturb the April 30, 2020 (reference 02) disqualification 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 from the April 30, 2020 (reference 02) decision was untimely. The decision that disqualified the claimant for unemployment insurance benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 25, 2020 without good cause attributable to the employer, remains in effect.



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James E. Timberland  
Administrative Law Judge

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January 29, 2021  
Decision Dated and Mailed

jet/ol

**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, you will be required to repay the benefits you have received.**