

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN A DALL-WINTHER-SPURBECK
Claimant

APPEAL NO. 13A-UI-08114-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 09/12/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Robin Dall-Winther-Spurbeck filed an appeal from a July 3, 2013, reference 10, overpayment decision, which appeal the Appeals Bureau treated as also an appeal from an early related disqualification decision. The earlier decision was the December 18, 2012, reference 09, decision that disqualified Ms. Dall-Winther-Spurbeck for benefits based on an agency conclusion that she had voluntarily quit employment with Mosaic without good cause attributable to that employer. After due notice was issued, a hearing was held on August 16, 2012. Ms. Dall-Winther-Spurbeck participated. Alice Smolsky of Equifax Workforce Solutions represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-08115-JTT. Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to Ms. Dall-Winther-Spurbeck. The administrative law judge took official notice of the agency's administrative record concerning the Claims Deputy's attempt to contact the claimant for a December 17, 2012 fact-finding interview.

ISSUE:

Whether there is good cause to treat Ms. Dall-Winther-Spurbeck's late appeal from the December 18, 2012, reference 09, disqualification decision as a timely appeal. The administrative law judge concludes there is not good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robin Dall-Winther-Spurbeck separated from employment with Mosaic on or about August 21, 2012. Effective August 26, 2012, Ms. Dall-Winther-Spurbeck established an "additional claim for benefits" that was based on a claim year that had started on September 12, 2010. Ms. Dall-Winther-Spurbeck received \$2,749.00 in emergency unemployment compensation (EUC) benefits for the 11-week period of August 26, 2012 through November 10, 2012 in connection with that earlier claim year. Ms. Dall-Winther-Spurbeck established a new "original claim" for unemployment insurance benefits that was effective October 7, 2012. Ms. Dall-Winther-Spurbeck did not have sufficient base period wages to be eligible for benefits

in connection with the claim year that started October 7, 2012 and, therefore, did not receive any benefits in connection with that particular claim year. In November 2012, a Workforce Development representative spoke to Ms. Dall-Wither-Spurbeck about that fact that she had exhausted all available unemployment insurance benefits. Ms. Dall-Wither-Spurbeck does not know the identity of the Workforce Development representative she spoke with at that time.

On December 18, 2012, Iowa Workforce Development mailed a December 18, 2012, reference 09, decision to Ms. Dall-Wither-Spurbeck's last-known address of record. The decision disqualified Ms. Dall-Wither-Spurbeck for unemployment insurance benefits based on her August 21, 2012, voluntary quit from Mosaic. The decision followed a December 17, 2012 fact-finding interview. A Claims Deputy had tried to reach Ms. Dall-Wither-Spurbeck for the fact-finding interview and had left a message with Ms. Dall-Wither-Spurbeck's husband. The decision that was mailed on December 18, 2012 indicated that, "IF THIS DECISION DENIES BENEFITS AND IS NOT REVERSED ON APPEAL, IT MAY RESULT IN AN OVERPAYMENT WHICH YOU WILL BE REQUIRED TO REPAY." The decision contained a warning that any appeal from the decision must be postmarked by December 28, 2012 or received by the Appeals Section by that date. The decision provided a telephone number Ms. Dall-Wither-Spurbeck could call if she had questions about the document or needed additional information. Ms. Dall-Wither-Spurbeck received the December 18, 2012, reference 09, decision in a timely manner, prior to the deadline for appeal. Ms. Dall-Wither-Spurbeck disregarded the disqualification decision and took no steps to file an appeal from the decision by the appeal deadline.

On July 3, 2013, Iowa Workforce Development mailed a July 3, 2013, reference 10, decision that said Ms. Dall-Wither-Spurbeck was overpaid \$2,749.00 in benefits for the 11 weeks between August 26, 2012 and November 10, 2012. The overpayment decision indicated that it was based on an earlier decision that disqualified Ms. Dall-Wither-Spurbeck for benefits in connection with her voluntary quit from Mosaic. The overpayment decision carried a July 13, 2013, deadline for appeal. On July 11, 2013, Ms. Dall-Wither-Spurbeck drafted her appeal from the overpayment decision. Ms. Dall-Wither-Spurbeck faxed the appeal to the Appeals Section the same day and the Appeals Section received the appeal the same day. The Appeals Section treated the timely appeal from the overpayment decision as also a late appeal from earlier disqualification 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, 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).

The appeal in question was filed on July 11, 2013, when the Appeals Section received the appeal by fax.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. Indeed the appeal was filed roughly six and half months beyond the deadline for appealing the December 18, 2012, reference 09, decision.

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. Dall-Winther-Spurbeck received the decision in a timely manner, prior to the deadline for appeal, but disregarded the decision. Ms. Dall-Winther-Spurbeck did not carefully read, inquire about, or otherwise respond to the decision. The reason she did not respond was because she had been informed by a Workforce Development representative in November 2012 that she had exhausted all available benefits, including all available EUC benefits based on the prior claim year. In other words,

Ms. Dall-Winther-Spurbeck erroneously assumed she need not respond to the decision. Ms. Dall-Winther-Spurbeck asserts that two Workforce Development representatives told her in November 2012 that she could disregard any and all future correspondence she received from Workforce Development. The administrative law judge finds that assertion simply not credible. Ms. Dall-Winther-Spurbeck cannot identify, and has taken no steps to identify, the agency representatives she alleges gave her wholesale permission to completely disregard any and all future correspondence from the agency. Ms. Dall-Winther-Spurbeck's assertion argues a level of incompetence on the part of two separate Workforce Advisors that is simply unimaginable given the nature of the agency representatives' positions, their training, the agency's mission, and the agency's standard operating procedures. The decision Ms. Dall-Winther-Spurbeck received in December 2012 clearly stated what it was about, clearly stated it was a disqualification for benefits, clearly stated the decision could result in an overpayment decision, clearly provided a deadline for appeal, and clearly provided instructions for filing an appeal. The document also provided a number Ms. Dall-Winther-Spurbeck could call if she had any questions about the document. A reasonable person would not have disregarded the document, discarded the document, and taken no further action for six to seven months.

The administrative law judge concludes that Ms. Dall-Winther-Spurbeck's failure to file a timely appeal from the December 18, 2012, 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). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the lower decision became a final agency decision, and there would be no legal authority for disturbing the 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 agency representative's December 18, 2012, reference 09, decision is affirmed. The claimant's appeal from that decision was untimely. The decision that disqualified the claimant for benefits in connection with the August 2012 separation from Mosaic remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css