

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERIC R DORSEY
Claimant

KATELMAN STEEL FABRICATION INC
Employer

APPEAL NO: 21A-UI-03837-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a late appeal from the July 17, 2020, reference 03, decision that disqualified him 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 April 8, 2020 without good cause attributable to the employer. After due notice was issued to the parties, a telephone hearing was held on March 18, 2021. The claimant, Eric Dorsey, participated. The employer did not provide a telephone number for the appeal hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-03838-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the July 17, 2020, reference 03, decision, the January 22, 2021, reference 05, decision, and the Agency's administrative record of benefits paid to the claimant (DBRO and KPYX).

ISSUE:

Whether the claimant's appeal from the July 17, 2020, reference 03, decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 17, 2020, Iowa Workforce Development mailed the July 17, 2020, reference 03, decision to the claimant's Council Bluffs last-known address of record. The decision disqualified the claimant for benefits and held the employer account of Katelman Steel Fabrication would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on April 8, 2020 without good cause attributable to the employer. The decision stated that the decision would be final unless an appeal was postmarked by July 27, 2020 or was received by the Appeal Section by that date. The decision provided a customer service number the claimant could call if he had questions about the decision. The decision provided clear and concise instructions for filing an appeal. The claimant received the decision in a timely manner. The claimant read far enough into the decision to see that it disqualified him for unemployment insurance benefits and then set the decision aside without noting the appeal deadline information. The claimant did not take steps to file an appeal by the July 27, 2020 deadline. The claimant did not take any further action on the matter until after he received a January 22,

2021, reference 05, decision that stated he was overpaid \$518.00 in regular benefits. On January 26, 2021, the claimant completed and transmitted an online appeal from the overpayment decision. The Appeals Bureau received the appeal on January 26, 2021 and treated it as also a late appeal from the July 17, 2020, reference 03, decision that prompted the 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 claimant's appeal from the July 17, 2020, reference 03, disqualification decision was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the July 27, 2020 appeal deadline, but did not file an appeal until January 26, 2021. Because the late filing of the appeal was attributable to the claimant's inaction, rather than attributable error or misinformation or delay or other action of 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 July 17, 2020, reference 03, 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 July 17, 2020, reference 03, decision was untimely. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the April 8, 2020 voluntary quit without good cause attributable to the employer, remains in effect.

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.**



James E. Timberland
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March 19, 2021
Decision Dated and Mailed

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