

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER L STARR**  
Claimant

**HOPE HAVEN AREA DEVELOPMENT CTR**  
Employer

**APPEAL 20A-UI-05153-SC-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On May 30, 2020 Jennifer L. Starr (claimant) filed an appeal from the May 5, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Hope Haven Development Centers (employer) quit due to dissatisfaction with the terms of her employment, which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing began on July 2, 2020 and concluded on July 22, 2020. The claimant participated personally. The employer participated through Senior Director of Human Resources Cheryl Wright, Site Manager Pati French, and Human Resource Specialist Jennifer Lafarey. The employer's Exhibits 4 and 6 through 8 and the department's Exhibit D1 were admitted into the record without objection. The employer's Exhibit 5 was admitted over the claimant's objection based on the document's foundation. The employer's Exhibits 1 through 3 were not admitted as they would have been duplicative to the testimony provided under oath. The administrative law judge took official notice of the claimant's appeal and envelope.

**ISSUE:**

Is the claimant's appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 5, 2020, Iowa Workforce Development (agency) mailed a disqualification decision to the claimant's last known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 15. The claimant did not receive the decision until May 19. She did not read the decision closely and did not know that an appeal was due on May 15, or ten days after the date of mailing. The appeal was not filed until May 30, more than ten days after she had notice of the disqualification.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Pursuant to rules Iowa Admin. Code r. 871-

26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant filed the appeal more than ten days after she received notice that she was not eligible for benefits. She has not established that the failure to file the appeal within ten days after receipt of notice was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

*Regular Unemployment Insurance Benefits Under State Law*

The May 5, 2020, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

*Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act*

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



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Stephanie R. Callahan  
Administrative Law Judge

August 4, 2020  
Decision Dated and Mailed

src/mh

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.