

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DITERMEN JESSY

Claimant

APPEAL 20A-UI-01787-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 11/24/19

Claimant: Appellant (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On February 26, 2020, the claimant filed an appeal from the January 24, 2020, (reference 09) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 16, 2020. Claimant participated personally and through an interpreter with CTS Language Link. Employer participated through risk manager Melissa Lewien. Employer's Exhibits 1 and 2 were received. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 24, 2020, Iowa Workforce Development mailed a reference 09 unemployment insurance decision to claimant denying benefits based on a separation from employment. Claimant received the decision a few days after it was mailed. The decision warned that an appeal was due by February 3, 2020. Claimant did not open the mail right away. It was set aside. Claimant has limited English proficiency. Claimant lives with his brother, who helps him with matters related to the English language. Eventually, claimant opened the mail and sought help from his brother and the local Iowa Workforce Development office. On February 26, 2020, claimant filed his appeal.

Employer is a temporary staffing firm. Claimant last worked at Palmer Candy Company from July 12, 2019, until November 14, 2019. The assignment ended at the client's request.

On November 15, 2019, employer contacted claimant by telephone and offered him another assignment. Claimant accepted the assignment and was scheduled to begin work on November 18, 2019.

Claimant signed a document stating he understood he was expected to complete any assignment he accepted, and that if he did not complete the assignment, employer could assume he voluntarily resigned.

Claimant did not appear for work on November 18, 2019, and never contacted employer again.

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:

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.

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).

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 unemployment insurance 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. Even if claimant is not proficient in reading English, he could have sought help sooner from his brother or the local Iowa Works office. He did not do that and delayed opening the mail. The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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).

Even if claimant had timely appealed the decision, the result remains the same. Claimant voluntarily quit employment by abandoning the job.

Iowa Code section 96.5(1) 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.

Claimant admits he knew about the assignment set to begin on November 18, 2019. Although claimant denies accepting the assignment, I do not find that denial credible. Claimant never appeared for work without notifying employer and without giving a reason and without requesting another assignment. Claimant's leaving the employment without notice or reason, and the failure to return to work renders the separation job abandonment without good cause attributable to the employer.

DECISION:

The January 24, 2020, (reference 09) unemployment insurance decision is affirmed. The appeal is not timely. Even if it was, claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 20, 2020
Decision Dated and Mailed

cal/scn