

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**NATHAN M LERUD**  
Claimant

**S-L SNACKS IA LLC**  
Employer

**APPEAL NO. 14A-UI-08591-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/06/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Nathan Lerud (claimant) appealed an unemployment insurance decision dated July 25, 2014 (reference 01) which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with S-L Snacks IA, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2014. The claimant participated in the hearing. The employer participated through Melissa Stiffler, Human Resources Generalist. Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision denying benefits was mailed to the claimant's last-known address of record on July 25, 2014. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 4, 2014. The appeal was not filed until August 20, 2014 which is after the date noticed on the disqualification decision.

When initially questioned as to whether he received the disqualification decision, the claimant said, "I believe I did yes." When he was questioned as to whether he received it shortly after it was mailed on July 25, 2014 he said, "If I remember right, yes." The claimant then added that he had just gotten out of the hospital. He was admitted to the hospital from June 10, 2014 through June 24, 2014 and again from July 23, 2014 through July 30, 2014. The claimant was later questioned as to why he indicated on his appeal letter that he did not receive the disqualification decision, he testified that he was wrong earlier and after thinking about it, he is positive he did not receive it.

The claimant worked as a full-time machine technician from October 7, 2013 through June 9, 2014 when he quit without notice due to a non-work-related medical condition.

#### **REASONING AND CONCLUSIONS OF LAW:**

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 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. 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 claimant initially testified that he received the disqualification decision shortly after it was mailed but he later changed that testimony to a denial. His initial testimony is found more credible than his subsequent denial because he testified he had just gotten out of the hospital when he received it and he was most recently released from the hospital on July 20, 2014. It is presumed the claimant received the disqualification decision on July 30, 2014 after he was released from the hospital and if he had filed an appeal within ten days from that date, it would have been found timely, even though it would have been past the deadline. However, he failed to submit it within that time frame and filed it 20 days after receiving it. The record does show that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure 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 871 IAC 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

However, in the alternative, even if the appeal were to be deemed timely, the administrative law judge would affirm the representative's decision on the merits. The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant quit his employment due to a non-work-related medical condition. His separation was without good cause attributable to the employer and benefits are denied.

**DECISION:**

The claimant's appeal in this case was not timely. The unemployment insurance decision dated July 25, 2014 (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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