

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM T LOCK

Claimant

QPS EMPLOYMENT GROUP INC

Employer

APPEAL NO. 21A-UI-00852-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20

Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.5(1)(j) – Temporary Employment Separation

STATEMENT OF THE CASE:

The claimant, William Lock, filed a late appeal from the October 19, 2020, reference 02, decision that disqualified him for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 25 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 11, 2021. Claimant participated. Mai Lor represented the employer and presented testimony through Melissa Janss. Exhibits 1 and A were received into evidence. The administrative law judge took official notice of the October 19, 2020, reference 02, 2020 decision and of KLOG.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective July 26, 2020. At that time the claimant provide Iowa Workforce Development with a mailing address on Iowa Street in Burlington. On or about October 14, 2020, the claimant participated in a cold call fact-finding interview. On October 19, 2020, Iowa Workforce Development mailed the October 19, 2020, reference 02, decision to the claimant at his Burlington last-known address of record. The decision disqualified he claimant for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 25 2020 without good cause attributable to the employer. The decision stated that the decision would become final unless an appeal was postmarked by October 29, 2020 or received by the Appeals Bureau by that date. The weight of the evidence in the record establishes that the claimant received the decision in a timely manner, prior to the deadline for appeal. The claimant acknowledges receipt of the decision. The claimant discarded the envelope in which the decision arrived. The claimant acknowledges learning of the denial of benefits when his benefits stopped, which would have been close in time to the October 19, 2020 mailing date of the decision. The claimant did not take steps to file an appeal by the October 29, 2020 appeal deadline. On December 14, 2020, the claimant emailed an

appeal to the uicclaimshelp@iwd.iowa.gov email address, rather than to the Appeals Bureau as directed on the decision. The Benefits Bureau forwarded the correspondence to the Appeals Bureau. In his appeal, the claimant acknowledged and apologized for the late filing of the appeal. The claimant made no reference in his appeal to receiving the decision late.

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 weight of the evidence establishes an untimely appeal. The weight of the evidence establishes that the claimant received the decision in a timely manner, prior to the deadline for appeal, did not file an appeal by October 29, 2020 deadline and instead delayed filing his appeal until December 14, 2020. The claimant's belated assertion of late receipt of the decision is not credible. The claimant would have the administrative law judge believe that he did not receive the October 29, 2020 decision until close in time to the December 14, 2020 appeal. The claimant provided internally inconsistent testimony. In addition, the claimant asserted he destroyed a key piece of evidence, the envelope in which the decision arrived. The weight of the evidence fails to establish that IWD or the United States Postal Service caused the substantially late filing of the appeal. Accordingly, 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 October 19, 2020. 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 October 19, 2020, reference 02, decision was untimely. The decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on February 25 2020 without good cause attributable to the employer, remains in effect.

In this event this decision regarding timeliness of appeal is reversed on further appeal, there is sufficient evidence in the record for entry of a decision on the merits without need for further hearing.



James E. Timberland
Administrative Law Judge

March 1, 2021
Decision Dated and Mailed

jet/lj

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, if any.**