

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

VICTORIA A YOUTSEY
Claimant

DW ZINSER COMPANY INCORPORATED
Employer

APPEAL NO. 22A-UI-15115-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/22/22
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The date of the appeal is a fact issue to be determined and timeliness of appeal is legal issue to be determined in this appeal. Victoria Youtsey filed an appeal from the June 30, 2022 (reference 01) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on April 27, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 22, 2022. Claimant participated. Christine Zinser represented the employer and presented additional testimony through Brent Tegels. Exhibit 1 through 5, the contents of the appeal packet plus the appeal envelope, were received into evidence.

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:

On June 30, 2022, Iowa Workforce Development mailed the June 30, 2022 (reference 01) decision to the claimant's Summerville, South Carolina last-known address of record. The reference 01 decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on April 27, 2022 without good cause attributable to the employer. The reference 01 decision stated the decision would become final unless an appeal was postmarked by July 10, 2022 or was received by the Appeals Section by that date. The decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. July 10, 2022 was a Sunday and the next working day was Monday, July 11, 2022. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal. The claimant drafted an appeal letter, but did not date the appeal letter. On Thursday, July 7, 2022, the claimant mailed the appeal by placing it in a stamped envelope and by placing the sealed envelope in a United States Postal Service mail deposit box in Goose

Creek, South Carolina. The United States Postal Service did not postmark the correspondence and instead simply drew an "X" through the two first class postage stamps the claimant had affixed. The Appeals Bureau received the mailed appeal on July 13, 2022.

Victoria Youtsey (claimant) was employed by DW Zinser Company Incorporated as a full-time office manager from March 2021 until April 27, 2022, when she voluntarily quit the employment to relocate to South Carolina with her husband. Throughout the employment, the claimant performed her work duties at the employer's office in Walford, Iowa. In mid-April 2022, the claimant's husband accepted employment with the City of Goose Creek South Carolina. The claimant's husband's South Carolina employment was to commence on May 5, 2022. In mid-April, the claimant notified her employer of her plans to leave the employment to relocate to South Carolina with her husband, but indicated she might stay behind and continue in the employment through the end of May 2022 while she attended to matters related to the couple's move to South Carolina. The employer valued the claimant's contribution to the employer's operations. The claimant's supervisor initiated a discussion with the claimant regarding the possibility of having the claimant continue in the employment by having the claimant transition to performing her duties remotely from South Carolina. The discussion about the transition to remote work was conditioned on the business owners, Dave and Christine Zinser, approving the change in the proposed change to remote work. The employer concluded the constellation of office manager duties was conducive to having the claimant perform the work remotely from South Carolina. On April 26 or 27, 2022, the claimant's supervisor told the claimant remote work would not be an option. At that time, the claimant's husband was about to leave for South Carolina. The claimant elected to save her husband a return trip to Iowa and elected to end the employment effective April 27, 2022, rather than continue to work through the end of May. The employer continued to have the same work available for the claimant in Walford, Iowa.

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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes a timely appeal from the June 30, 2022 (reference 01) decision. The claimant received the reference 01 decision in a timely manner and had a reasonable opportunity to file an appeal by the July 11, 2022 extended appeal deadline. The claimant placed the correspondence in a United States Postal Service mail deposit box on July 7, 2022. The United States Postal Service failed to affix a postmark. In the absence of a postmark and in the absence of a dated appeal letter, the Appeals Bureau's receipt of the mailed correspondence on July 13, 2022 is the best available evidence regarding the timeliness of the appeal. The Appeals Bureau's receipt of the mailed appeal on July 13, 2022 is sufficient to establish the correspondence must have been in the possession of and processed by the United States Postal Service in South Carolina prior to the July 11, 2022 extended deadline for appeal. The USPS's error in failing to postmark the correspondence cannot be attributed to the claimant and provides good cause to deem the appeal a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was timely, the administrative law judge has jurisdiction to enter a ruling on the merits 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).

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(2) and (10) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (2) The claimant moved to a different locality.

...

- (10) The claimant left employment to accompany the spouse to a new locality.

...

- (38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The weight of the evidence establishes the claimant voluntarily quit on April 27, 2022 without good cause attributable to the employer. The claimant voluntarily quit to relocate to South Carolina with her spouse. The weight of the evidence fails to establish the employer terminated the employment early. The weight of the evidence establishes instead that the claimant elected to move up the effective date of her quit, from the end of May 2022 to April 27, 2022, so that she could accompany her husband on his trip to South Carolina. The employer continued to have the same work available for the claimant at the Walford, Iowa location. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The claimant appeal from the June 30, 2022 (reference 01) decision was timely. The reference 01 decision is AFFIRMED. The claimant voluntarily quit on April 27, 2022 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

September 30, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.