

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES E PALMITER
Claimant

MILLER ELECTRIC COMPANY
Employer

APPEAL 22A-UI-03704-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On February 2, 2022, James Palmiter (claimant/appellant) filed an appeal from the Iowa Workforce Development decision dated January 20, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on April 3, 2020 because he knew he would be laid off in the future, although there was still work available, and the quitting was not caused by the employer.

A telephone hearing was held on March 11, 2022. The parties were properly notified of the hearing. Claimant participated personally. Miller Electric Company (employer/respondent) participated by HR Assistant Angela Kilchrste.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer in September 2019. Claimant was employed as a journeyman electrician. Around mid-March 2020, employer gave claimant and others the option of "taking" a furlough or layoff because of the pandemic. Claimant chose to leave employment with employer on April 3, 2020 because he did not feel comfortable continuing to work for employer during the pandemic and because he believed it was prudent to return home to North Carolina to be with his family during the pandemic. There was continuing work available had claimant not resigned. Employer was taking reasonable precautions, including masking, hand-washing stations, social distancing, and holding out individuals with symptoms of COVID-19.

The Unemployment Insurance Decision was mailed to claimant at 172 JACK DELAIGLE RD WAYNESBORO GA 30830-5050 on January 20, 2021. That was claimant's correct address at that time. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 30, 2021. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. The decision warns that if it is not reversed it may result in an overpayment.

Claimant did receive the decision in a timely manner but did not appeal it. This is because he spoke with an IWD representative who said the claim needed to be "corrected" to a claim related to the pandemic. Claimant believed after this conversation that he did not need to take any further action, although the representative did not advise him NOT to appeal or otherwise indicate appealing was not necessary.

Claimant did not receive subsequent overpayment decisions sent to him at the Georgia address in September 2021 because he moved and did not update his address with IWD. Claimant did not appeal until he received a call from an IWD representative in approximately February 2022 advising him that he owed money to IWD.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely. The decision dated January 20, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on April 3, 2020 is therefore final and remains in force.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.
 - (b)
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

Claimant received the decision in a timely manner. Claimant did not appeal initially because he believed his claim would be "corrected" after speaking with the IWD representative. However, the representative did not advise him NOT to appeal or otherwise indicate appealing was not necessary. Furthermore, the decision is clear that it becomes final unless an appeal is taken by January 30, 2021, and may result in an overpayment if not reversed. Claimant did not heed the clear instructions on the decision and instead incorrectly assumed his conversation with the IWD representative had resolved the issue.

The administrative law judge finds the delay was not due to IWD error or misinformation but due to claimant failing to heed the clear instructions on the decision. This is not a good cause reason for delay such that the appeal can be accepted as timely. Because the appeal is untimely the decision denying benefits is final and remains in force, and the administrative law judge is without jurisdiction to change it.


Even if the appeal were timely, the administrative law judge would find that claimant's separation from employment was disqualifying. Claimant voluntarily left employment when there was continuing work available for him, and he has not shown that his leaving was with good cause attributable to employer. Notably, employer was taking reasonable precautions to prevent the spread of COVID-19 at claimant's workplace.

The administrative law judge is sympathetic to claimant's decision to leave employment and return home during the pandemic. However, unemployment insurance benefits are meant for individuals who are able to work, available for work, and earnestly and actively seeking work but through no fault of their own are unable to secure employment. That was not the situation here. Claimant made a voluntary choice to not continue working for employer when continued work was available.

The administrative law judge notes claimant may wish to apply for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.

DECISION:

The administrative law judge concludes the claimant's appeal was untimely. The decision dated January 20, 2021 (reference 01) that disqualified claimant from unemployment insurance benefits based on a finding that he voluntarily quit work on April 3, 2020 is therefore final and remains in force.



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

March 22nd, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

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 this decision determines you have been overpaid federal pandemic-related benefits you may request a waiver of the overpayment. Instructions for requesting a waiver can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

Individuals who do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is the PIN you used for the hearing.**

If this decision becomes final and you are not eligible for PUA, you may have an overpayment of benefits.