

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JENNIFER A FINCH
Claimant

APPEAL NO: 13A-UI-00485-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUNT MAUDES OF AMES LLC
Employer

**OC: 03/18/12
Claimant: Appellant (2)**

Section 96.6-2 – Timeliness of Appeal/Final Decision
871 IAC 24.35(2) – Appeal Delay

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 4, 2013, reference 08, that amends 04, that held she voluntarily quit without good cause attributable to her employer on November 19, 2012, and benefits are denied. A telephone hearing was held on February 13, 2013. The claimant participated. Steve Heller, Head Chef, and Brian Gould, GM, participated. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the claimant filed a timely appeal.

Whether claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record finds: The department issued a decision dated December 18, 2012, reference 04, that held claimant was still employed by the employer and the employer was granted a relief of charges from its account. The appeal deadline date is December 28. There was no appeal. The department issued a decision on January 4, 2013 amending the December 18 decision denying claimant benefits.

The department mailed the decision to claimant's address of record on January 4, 2013 with an appeal deadline date of January 14. The claimant submitted a faxed appeal to the department on January 16, 2013. She delayed her appeal based on conversations with department representatives to expect this decision that would only affect the employer's account and not her eligibility. When she learned that no benefit was deposited to her account, she filed an immediate appeal.

The department issued a decision on December 4 granting claimant DAT and December 20 granting TEB benefits.

REASONING AND CONCLUSIONS OF LAW:

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. 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 record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes claimant affected a timely appeal that was delayed by the confusion department representatives caused in communicating mis-information. The claimant offered a good cause for the appeal delay. Claimant was led to believe she was eligible for benefits and the amended decision relieved the employer from benefit charges.

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, subsection 10, 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 administrative law judge further concludes the department decision dated December 18, 2012, reference 04, became final on December 28 that precludes the department for issuing an amended decision after that date (January 4, 2013). This decision imposes no benefit disqualification (claimant is eligible) and the employer is relieved from benefit charges. The department decision dated January 4 is set aside and dismissed. The department is bound by the ten-day period to amend or appeal and once that time has passed, it is held to the same jurisdictional standard as the claimant or employer.

DECISION:

The department decision dated January 4, 2013, reference 08, that amends 04, is reversed and set aside. The claimant filed a timely appeal, and the department decision December 18, 2012, reference 04, remains in force and effect. Claimant is entitled to receive benefits, provided she is otherwise eligible. The employer is relieved of benefit charges.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs