

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEROME A FIELD

Claimant

APPEAL NO: 15A-UI-03032-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES

Employer

OC: 01/25/15

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Jerome A. Field (claimant) appealed a representative's February 11, 2015 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Winnebago Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2015. The claimant participated in the hearing. Gary McCarthy appeared on the employer's behalf and presented testimony from one other witness, Bob White. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on February 11, 2015. The claimant received the decision within a few days thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 21, 2015, a Saturday. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, February 23, 2015. The appeal was not filed until it was hand-delivered to a local Agency office on March 10, 2015; which is after the date noticed on the disqualification decision.

The claimant asserted that at least part of the delay was because he had been "hospitalized for a couple of weeks." However, he could not establish during the hearing whether he had been hospitalized prior to February 23 or not.

The claimant started working for the employer on October 4, 2010. He worked full time as a certified welder. His last day of work was January 28, 2015. He voluntarily quit on that date.

The claimant had been off work on a leave of absence for disability caused by carpal tunnel syndrome. However, he had been fully released by his doctor as able return to work without restriction; he did return to work on January 23, 2015. When he returned, he advised the employer that he did not wish to return to working his previously regular job, welding on floor assemblies, because he felt it would still cause him pain. The employer allowed the claimant to switch to another job, welding front end brackets on chassis.

On the morning of January 28 the claimant came in to speak to his supervisor, White, at about 7:00 a.m.; an hour after starting work. He indicated that he was still having pain and did not want to keep working on the new job, either. White urged him to try it a bit longer and the claimant initially agreed but indicated that he might be quitting. At about 8:00 a.m. the claimant returned to White's office, turned in his glasses and identification, and indicated that he was quitting. The claimant had not sought any further medication attention or advice, and had not been told by his doctor that he should quit.

On January 29 the claimant contacted McCarthy, the personnel supervisor. He told McCarthy that he had made a mistake in quitting and asked to be allowed to return to work. McCarthy advised the claimant that since he had quit he could not be allowed to return to work.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. Rule 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. 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 prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

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. If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. However, in order for good cause to be found for an alleged work related medical or health issue, prior to quitting the employee must present competent evidence showing adequate health reasons to justify ending the employment, and before quitting must have informed the employer of the work-related health problem and inform the employer that the employee intends to quit unless the problem is corrected or the employee is reasonably accommodated. Rule 871 IAC 24.26(6)b.

The claimant has not presented competent evidence showing adequate health reasons to justify his quitting. He was not advised by his doctor to quit or to even seek further accommodations, and, before quitting he did not inform the employer that further accommodations were medically necessary. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's February 11, 2015 (reference 01) decision is affirmed. The appeal in this case was not timely and the decision of the representative has become final and remains in full force and effect. The claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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