

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATIE M STELTER
Claimant

ADARA HOME HEALTH
Employer

APPEAL NO. 21A-UI-21142-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 7, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 18, 2021. Claimant participated and was represented by counsel Marlon Moormann. Employer participated by Angie Owens. Claimant's Exhibit A and Employer's Exhibit 1 were admitted into evidence.

ISSUES:

Whether claimant quit for good cause attributable to employer.

Whether claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: A decision was mailed to the claimant's last known address of record on October 7, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 17, 2020. The appeal was not filed until September 21, 2021, which is after the date noticed on the disqualification decision. Claimant stated she contacted IWD shortly after receiving the disqualification notice. The representative told claimant that she did not need to file an appeal at the time. Claimant did not then file an appeal. Claimant only filed the appeal after she received multiple additional notices nearly a year later stating that the claimant had been overpaid various unemployment benefits.

Claimant last worked for employer on March 27, 2020. Claimant put in a two weeks' notice to quit her job on that date and employer had no ongoing work for claimant as a result of Covid. Claimant quit such that she could start a new job with Mayo clinic where she was to work full time hours at a higher rate of pay than she'd received with Adara.

Claimant did work for Mayo, but stated that as a result of Covid shutdowns, the work she received from Mayo was sporadic and not full time.

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 begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 as she was told by an IWD representative that she did not need to file an appeal when the original decision was received.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to an Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal is therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature 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.

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

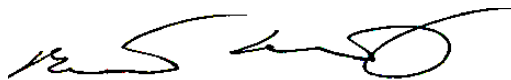
a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause when the claimant quit to take employment with Mayo Clinic. The claimant did start that employment that was supposed to be fulltime.

As the claimant quit for other employment, employer's account will not be charged for unemployment benefits received by claimant.

DECISION:

The decision of the representative dated October 7, 2020, reference 01, is modified in favor of the claimant. Unemployment insurance benefits are allowed provided claimant is otherwise eligible. The employer's account shall not be charged for unemployment benefits received by claimant.



Blair A. Bennett
Administrative Law Judge

December 28, 2021
Decision Dated and Mailed

bab/scn