

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA J MUKALA
Claimant

SEABOARD TRIUMPH FOODS LLC
Employer

APPEAL 22A-UI-04452-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (1R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Linda J. Mukala, filed an appeal from the August 13, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on March 23, 2022. The claimant participated personally and through a Lingala interpreter with CTS Language Link. The employer/respondent, Sea Board Triumph Foods LLC, did not participate. Official notice of the administrative record was taken. Department Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence, the administrative law judge finds: Claimant began work for this employer in August 2019 and worked full-time in production until January 3, 2020. Claimant voluntarily quit the employment because she lost childcare and was having car problems. She tried to call the employer to notify it of her resignation but there was no answer, so she drove to employer and gave the guard shack her badge to return.

Claimant later worked at McDonalds during a period she filed for unemployment insurance benefits. The issue of whether claimant was partially unemployed between May 31, 2020 and August 5, 2020 has not yet been addressed by the Benefits Bureau.

An initial decision (reference 02) was mailed to the claimant/appellant’s address of record on August 13, 2020. The letter contained a warning that an appeal was due by August 23, 2020 and directed claimant to call customer service with questions.

Claimant moved from the address of record in July 2020 and notified USPS but did not notify Iowa Workforce Development. Claimant did receive the decision, but late, sometime in September. Claimant primarily speaks Lingala. She asked a friend to help translate the initial decision. She understood it was a denial of benefits but did not understand the deadline to appeal. Approximately sixteen months later in late January 2022, claimant asked a second friend to review documentation and letters from Iowa Workforce Development. This friend better understood and explained the documents to claimant. This friend directed claimant to file an appeal. Appellant filed the appeal on February 13, 2022 (See Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

In this case, claimant filed her appeal to the August 13, 2020 initial decision on February 13, 2022, approximately one and a half years after it was mailed. While the decision was initially delayed due to claimant moving, claimant did receive the decision. Even if the administrative law judge recognizes claimant has limited English proficiency and twice sought friends to help her with translation, her appeal was still beyond ten days of the most recent friend assisting her. Claimant stated the friend helped her in late January 2022. Even if January 31st was used as Day 1 to calculate the ten day appeal period, claimant's appeal was not timely because it was filed on February 13, 2022, more than ten days later.

The claimant's delay in filing her appeal to this decision *was not due to any 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 was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

In the alternative, even if the administrative law judge considered the appeal to be timely, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer.

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 Admin. Code r. 871-24.25(23) 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:

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

Claimant's quitting due to a lack of childcare and personal issues would be disqualifying.

The issue of whether claimant was partially unemployed between May 31, 2020 and August 5, 2020 is remanded to the Benefits Bureau for an initial investigation.

DECISION:

The August 13, 2020 (reference 02) initial decision is affirmed. The appeal was not timely filed and the appeal is dismissed.

REMAND:

The issue of whether claimant was partially unemployed between May 31, 2020 and August 5, 2020 is remanded to the Benefits Bureau for an initial investigation.



Jennifer L. Beckman
Administrative Law Judge
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Fax 515-478-3528

April 5, 2022
Decision Dated and Mailed

jlb/mh

NOTE TO CLAIMANT:

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>