

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCISCA T RODRIGUEZ
Claimant

APPEAL NO. 15A-UI-12040-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN INCOME LIFE
Employer

OC: 05/03/15
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Francisca Rodriguez filed an appeal from the October 1, 2015, reference 05, decision that disqualified her for benefits and that relieved the employer account of American Income Life of liability for benefits, based on an Agency conclusion that Ms. Rodriguez had voluntarily quit on August 17, 2015 without good cause attributable to American Income Life. After due notice was issued, a hearing was held on November 16, 2015. Ms. Rodriguez participated. Stephanie Matus represented American Income Life. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-12041-JTT. Department Exhibits D-1 through D-4 were received into evidence in connection with the present matter.

ISSUE:

Whether Ms. Rodriguez's appeal from the October 1, 2015, reference 05, disqualification decision was a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 1, 2015, Workforce Development mailed a copy of the October 1, 2015, reference 05, decision to claimant Francisca Rodriguez at her last-known address of record in Urbandale. The decision was mailed from Des Moines. Ms. Rodriguez received the decision on or before October 5, 2015. The decision disqualified Ms. Rodriguez for benefits and relieved the employer account of American Income Life of liability for benefits, based on an Agency conclusion that Ms. Rodriguez had voluntarily quit on August 17, 2015 without good cause attributable to American Income Life. The decision indicated on its face that an appeal from the decision must be postmarked by October 11, 2015 or received by the Appeals Section by that date. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. October 11, 2015 was a Sunday and the next working day was Monday, October 12, 2015.

On October 5, 2015, Workforce Development mailed a copy of the October 5, 2015, reference 06, decision to Ms. Rodriguez's address of record. The reference 06 decision stated that Ms. Rodriguez had been overpaid \$670.48 in benefits for the three weeks between August 23, 2015 and September 12, 2015, based on the earlier decision that disqualified her for benefits in connection with her separation from American Income Life. The October 5, 2015 overpayment decision indicated that an appeal from the decision must be postmarked by October 15, 2015 or received by the Appeals Section by that date. Ms. Rodriguez received the reference 06 decision on or before October 7, 2015.

On Tuesday, October 13, 2015, Ms. Rodriguez delivered a sealed packet of materials to the Workforce Development Center at 430 East Grand Avenue in Des Moines. The packet included wage/income records concerning work Ms. Rodriguez had performed for American Income Life. The packet also included a request for an appeal hearing. The Appeals Section did not receive the materials that Ms. Rodriguez delivered to 430 East Grand Avenue.

On October 29, 2015, Ms. Rodriguez telephoned Workforce Development to follow up on the appeal she believed she had filed on October 13, 2015. On October 29, 2015, Ms. Rodriguez spoke with an Appeals Bureau representative and learned that no appeal had been received by the Appeals Bureau. At that time, Ms. Rodriguez enlisted the assistance of the Workforce Development representative in filing an online appeal from the October 1, 2015, reference 05, decision and the October 5, 2015, reference 06, decision. In the appeal, Ms. Rodriguez asserted the appeal was her second attempt to file an appeal and referenced an earlier appeal hand delivered on October 13, 2015. The Appeals Bureau received the October 29, 2015 appeals on October 29, 2015 and immediately docketed an appeal from each decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The only appeal that the Appeals Section received was the appeal that was electronically filed on October 29, 2015 and received that same day. However, the weight of the evidence indicates that Ms. Rodriguez dropped off materials at the Des Moines Workforce Development Center at 430 East Grand Avenue on October 13, 2015. An appeal hand delivered to the local Workforce Development Center on October 13, 2015 would be deemed filed that day.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the October 1, 2015, reference 05, decision 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 have a reasonable opportunity to file a timely appeal. Though the administrative law judge believes Ms. Rodriguez overstated the time it took for the October 1, 2015, reference 05, decision to get to her, even if she did not receive the decision until October 5, 2015, she would still have had a week in which to file a timely appeal by the October 12, 2015 extended appeal deadline. Ms. Rodriguez elected not to take any steps to file an appeal from the matter until Tuesday, October 13, 2015, after the appeal deadline applicable to the October 1, 2015, reference 05, decision.

Ms. Rodriguez's failure to file a timely appeal from the October 1, 2015, reference 05, decision within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the October 1, 2015, reference 05, decision that disqualified Ms. Rodriguez for benefits. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The October 1, 2015, reference 05, decision is affirmed. The appeal in this case was not timely. The decision that disqualified the claimant for benefits and that relieved the employer account of American Income Life of liability for benefits, based on the August 17, 2015 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs