

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GOWUN PARK
Claimant

SIMPSON COLLEGE
Employer

APPEAL NO. 21A-UI-18703-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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

STATEMENT OF THE CASE:

The claimant, Gowun Park, filed a late appeal from the September 29, 2020, reference 01, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on May 31, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 15, 2021. The claimant participated personally and was represented by attorney Robb Goedicke. Attorney Haley Hermanson represented the employer and presented testimony through Mimi Bartley-Nancarrow. There were three appeal numbers set for a consolidated hearing: 21A-UI-18703-JT-T, 21A-UI-18704-JT-T, and 21A-UI-18705-JT-T. Claimant's Exhibits A, B and H and Department Exhibits D-1 through D-6 were received into evidence. The employer raised the potential issue of a separation based on a disqualifying incarceration, but declined to waive 10-day formal notice on that issue.

ISSUE:

Whether the claimant's appeal from the September 29, 2020, reference 01, disqualification decision was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a South Korean born resident alien who has resided in the United States off and on since 2000. The claimant completed a Doctorate of Philosophy (Ph.D.) in Economics at an American University and worked as an Assistant Professor of Economics at Simpson College. The claimant is able to read and speak English. The claimant is able to conduct research and execute contracts in English.

The claimant established an original claim for benefits that was effective May 31, 2020. On September 28, 2020, the claimant and the employer participated in a fact-finding interview that address the claimant's separation from Simpson College. The Benefits Bureau deputy told the claimant and the employer that a decision would be mailed to the parties after the fact-finding interview.

On September 29, 2020, Iowa Workforce Development Benefits Bureau mailed the September 29, 2020, reference 01, decision to the claimant's West Des Moines last-known address of record. The reference 01 decision disqualified the claimant for benefits, based on the deputy's conclusion that the claimant voluntarily quit effective May 31, 2020 without good cause attributable to the employer. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by October 9, 2020 or was received by the Appeal Section by that date. The weight of the evidence in the record establishes that the claimant received the decision in a timely manner, prior to the deadline for appeal. The claimant did not file an appeal from the disqualification decision by the October 9, 2020 deadline or at any time prior to August 18, 2021. The claimant discontinued her weekly claims after filing the claim for the week that ended October 3, 2020, the week of the fact-finding interview and the week during which the reference 01 decision was mailed to the claimant. The claimant asserts that the weekly claim reporting system would thereafter not allow her to file a weekly claim following the week that ended October 3, 2021. The claimant elected not to contact Iowa Workforce Development regarding the locked claim and elected not to make further contact with IWD for more than 10 months after the claim was locked in connection with entry of the disqualification decision.

On August 9 and 10, 2021, Iowa Workforce Development mailed overpayment decisions to the claimant. The reference 02 overpayment decision held the claimant was overpaid \$7,691.00 in regular benefits, for 16 weeks between May 31, 2020 through September 19, 2020, based on the earlier decision that denied benefits in connection with the claimant's separation from Simpson Collee. The reference 03 overpayment decision held the claimant was overpaid \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) for eight weeks ending July 25, 2020, based on the other overpayment decision that stated the claimant was ineligible for benefits during the affected period. The reference 02 decision included an August 20, 2021 deadline for appeal. The reference 03 decision included an August 19, 2021 appeal deadline.

On August 18, 2021, attorney Robb Goedicke mailed an appeal of the overpayment decisions to the Appeals Bureau on behalf of the claimant. The appeal is dated August 18, 2020 and bears an August 28, 2020 Des Moines postmark. The Appeals Bureau received the appeal on August 20, 2021 and treated the appeal as also a late appeal from the September 29, 2020, reference 01, disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

The appeal was filed on August 18, 2021, as indicated by the postmark on the envelope in which the appeal was mailed.

The evidence in the record establishes 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. Iowa Admin. Code r. 871-24.35(2)(c).

The weight of the evidence in the record establishes an untimely appeal from the September 29, 2020, reference 01, disqualification decision. The weight of the evidence establishes the claimant received the decision in a timely manner, had a reasonable opportunity to filing an appeal by the October 9, 2020 applicable appeal deadline, but unreasonably delayed filing the

appeal to August 18, 2021. The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was attributable to the claimant's inaction and was not due to Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. See Iowa Administrative Code rule 871-24.35(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 September 29, 2020, reference 01 decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the September 29, 2020, reference 01, decision was untimely. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on May 31, 2020 without good cause attributable to the employer, remains in effect.



James E. Timberland
Administrative Law Judge

November 29, 2021
Decision Dated and Mailed

jet/kmj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.