

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LILY E GIESLER
Claimant

APPEAL NO. 21A-UI-22964-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BALANCE AUTISM
Employer

OC: 04/19/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 8, 2020, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on December 9, 2021. The claimant did participate. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether the appeal is timely?

Whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on December 8, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 18, 2020. The appeal was not filed until October 14, 2021, which is after the date noticed on the disqualification decision. Claimant stated she did not receive the decision.

Claimant was hired by employer early in 2020 as a part time autism associate. Soon after her hire, Covid began ravaging the area. Claimant's job was to visit and work with afflicted clients out in the community. As a result of Covid, claimant was unable to do the job she was hired to do. Instead, claimant's job turned out to be janitorial in nature. She cleaned and sanitized products to be used. Claimant addressed this with a supervisor prior to her quit, but was told that there was nothing that could be done about the situation.

In addition to claimant not working as she was hired, claimant felt harassed by a supervisor. She didn't share this information until immediately before her quit.

Additionally, claimant was asked to wear a mask at work. Claimant stated that she has asthma, but did not provide worker with a doctor's excuse allowing her to take breaks without a mask on.

Claimant quit work effective June 10, 2020. There was ongoing work available to claimant at the time of quit.

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 did not receive the decision.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was potentially 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 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:

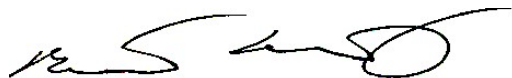
An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The administrative law judge holds that the evidence has established that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because the job she had to do throughout almost all of her employment was different than the job she was hired to do. Employer stated that there was nothing they could do about this. This constitutes good cause attributable to employer for claimant's quit. The decision in this matter is reversed, and claimant is eligible for benefits after June 13, 2020

DECISION:

The December 8, 2020, reference 03, decision is reversed. The appeal in this case is deemed timely, and the decision of the representative is reversed. Claimant is eligible for benefits after June 13, 2020 if she is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

January 12, 2022
Decision Dated and Mailed

bab/kmj