IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

AYOR N ACHICHOL Claimant **SEABOARD TRIUMPH FOODS LLC** Employer	**APPEAL NO. 20A-UI-12365-B2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/21/20** **Claimant: Appellant (1)**

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 September 15, 2020, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on December 7, 2020. 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 September 15, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 25, 2020. The appeal was not filed until October 5, 2020, which is after the date noticed on the disqualification decision. Claimant stated that she no longer resides at the address given, but wished for the documents to continue to be sent there. Claimant stated that she has arranged to have her brothers send the mail to her as soon as they get it.

Claimant stated with regards to this decision that she was staying in the Omaha area. Her mother told claimant that she did not have room for her at her residence. Claimant did not change the address to receive mail, and did not alert anyone of the fact that she would be receiving important mail. Claimant stated that once she came back to Sioux City and asked a brother about mail, she was given both this, and Ref 01 decisions denying her benefits. Claimant then appealed these decisions outside of the ten day time period.

Claimant was rehired by employer on June 23, 2020 after a previous termination that occurred on June 16, 2020. Claimant tried to work her production job, but as a result of the medications she was on, she was unable to do her job. Claimant voluntarily quit on July 6, 2020. Her quit was not brought about by her employer and there was ongoing work available.

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 have a reasonable opportunity to file a timely appeal.

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

If claimant's appeal was deemed to have been timely filed, then she would have been disqualified from the receipt of benefits on the basis that claimant voluntarily quit her job without good cause attributable to employer.

DECISION:

The September 15, 2020, reference 06, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Blair A. Bennett
Administrative Law Judge

__December 14, 2020__
Decision Dated and Mailed

bab/mh