

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PETER MARSING

Claimant

APPEAL NO. 17A-UI-00533-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FISK FARM & HOME INC

Employer

OC: 09/04/16

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 December 12, 2016, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on February 6, 2017. The claimant did participate. The employer did participate through Janelle Regan.

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 12, 2016. Claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 22, 2016. The appeal was not filed until January 18, 2017, which is after the date noticed on the disqualification decision.

Claimant stated that shortly after receiving the decision he called IWD. He spoke with an unnamed person who allegedly told him that he would not have to pay back any of the payments received since filing for unemployment. As claimant thought he had received the monies he would be receiving, and did not have to pay it back, he thought he did not need to appeal the decision. Claimant did not file an appeal in a timely basis. On January 11, 2017 claimant received a separate document stating that he was overpaid benefits. Claimant then timely appealed that matter and this matter.

Employer purchased the business on September 1, 2016 from claimant and his wife who had been owners and employees of the former company that sold to employer. Prior to the purchase, employer received names of all current employees who wished to continue working at that business. Employer did not interview any of those people, and rehired all people listed. Claimant and his wife expressed that they wished to move on to other things and did not wish to

continue employment. Employer stated that there was employment available for claimant if he had expressed an interest to continue working.

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.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

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 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 there is at least a question of whether claimant did not file a timely appeal because of appellant did not have a reasonable opportunity to file a timely appeal, when he was incorrectly told by an IWD official that he would not have to repay any overpayments received.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to any Agency error 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 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). The administrative law judge will next look at the separation issue.

Claimant chose not to continue working for the new business owner. This was not caused by any action on the part of employer, but rather was a conscious decision by claimant to move in a different direction. As such, claimant is not eligible to receive unemployment benefits.

DECISION:

The December 12, 2016, reference 02, decision is affirmed. Although the administrative law judge believes that he appeal in this case was deemed to be timely filed, the underlying decision reached by the fact finder was correct as to the separation issue, and the decision of the representative remains in effect.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs