

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES A STRAYER
Claimant

SCHOLASTIC INC
Employer

APPEAL NO. 20A-UI-14129-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a late appeal from the June 5, 2020 (reference 01) decision that disqualified him for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on September 13, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 7, 2021. Claimant participated. John Evola represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 20A-UI-14130-JTT and 20A-UI-14131-JTT. Exhibits A and 1 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, NMRO, the June 5, 2020 (reference 01) decision, the October 26, 2020 (reference 02) overpayment decision, and the October 28, 2020 (reference 03) FPUC overpayment decision, the applications for PUA benefits and the decision denying PUA benefits.

ISSUE:

Whether the appeal from the June 5, 2020 (reference 01) decision was timely. Whether there is good cause to treat the late appeal from that decision as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 5, 2020, Iowa Workforce Development mailed the June 5, 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 employment with Scholastic, Inc. on September 13, 2019 without good cause attributable to that employer. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by June 15, 2020 or received by the Appeal Section by that date. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal, and elected not to file an appeal from the decision.

On September 30, 2020, IWD mailed an Assessment for PUA Benefits to the claimant that denied Pandemic Unemployment Assistance (PUA) benefits. The Assessment included an October 12, 2020 deadline for appeal.

On October 26, 2020, IWD mailed a reference 02 overpayment decision to the claimant. The reference 02 decision held the claimant was overpaid \$3,500.00 in regular benefits for seven weeks between April 5, 2020 and May 23, 2020, based on the earlier decision that disqualified him for benefits in connection with his voluntary quit from employment with Scholastic, Inc. The reference 02 decision included a November 5, 2020 deadline for appeal.

On October 28, 2020, IWD mailed a reference 03 FPUC overpayment decision to the claimant. The reference 03 decision held the claimant was overpaid \$4,200.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the seven weeks between April 5, 2020 and May 23, 2020, based on the reference 01 regarding his voluntary quit from employment with Scholastic, Inc. The reference 03 decision included a November 7, 2020 deadline for appeal.

On October 30, 2020, the claimant completed and transmitted an online appeal via the IWD website. The appeal on its face indicates that it is an appeal from the October 26, 2020 (reference 02) decision and that the claimant received the reference 02 decision on October 29, 2020. The body of the appeal addresses the claimant's application for PUA benefits. The Appeals Bureau received the appeal on October 30, 2020 and treated it as also a late appeal from the June 5, 2020 (reference 01) decision and a timely appeal from the October 28, 2020, (reference 03) FPUC overpayment 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 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).

The appeal, as it relates to the June 5, 2020 (reference 01) disqualification decision is an untimely appeal. The claimant received the reference 01 decision in a timely manner, had a reasonable opportunity to file an appeal by the June 15, 2020 appeal deadline, but elected not to file an appeal by the appeal deadline. Indeed, the claimant elected not to file an appeal until October 30, 2020, after he received the overpayment decisions that were based on the reference 01 disqualification decision. 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. See Iowa Administrative Code rule 871-24.35(2)(c). An appeal filed almost five months late, especially after there was a reasonable opportunity to file an appeal by the June 2020 deadline, would involve unreasonable delay. Because the late filing of the appeal was attributable to the claimant, and not attributable to IWD or to the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal from the June 5, 2020 (reference 01) decision was untimely, the administrative law judge lacks jurisdiction to disturb that 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 June 5, 2020 (reference 01) decision was untimely. The decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on September 13, 2019 without good cause attributable to the employer, remains in effect.



James E. Timberland
Administrative Law Judge

January 26, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**