

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**ALESE L WESTMORELAND**

Claimant

and

**RANDSTAD GENERAL PARTNER US  
LLC**

Employer

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**HEARING NUMBER: 15B-UI-00053**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-1, 96.6-2**

**DECISION**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** and **REMANDS** as set forth below.

**FINDINGS OF FACT:**

The Claimant established a benefit year commencing on November 3, 2013. Subsequent to this she *apparently* was separated from employment from the Employer Randstad General Partner (we do not today so find as it is not relevant). She then worked for the Employer again and was separated in the fall of 2014. She established a subsequent benefit year on November 9, 2014. She was then mailed a decision on December 12, 2014 disqualifying her based on the reasoning that she “voluntarily quit [her] temporary job on 11/22/13...” The employer in that matter was Randstad and the claim year was in 2013. She was given until Monday 12/22/2014 to appeal this decision. She was then sent a decision on December 15, 2014 stating that she was disqualified based on the reasoning that she quit Randstad “on 10/02/14 without completing the job for which you were hired.” The claim year on that decision was 2014. She was given until December 26, 2014 (accounting for the holiday) to appeal this decision. The Claimant read the decisions as applying to her most recent period of employment with Randstad, as she did not expect a ruling on an alleged quit that took place over a year before. The Claimant does not challenge that she quit her employer in 2014 and in fact has withdrawn that appeal. Because she did not seek to challenge the 2014 quit, she did nothing in response to the disqualifications. The Claimant first understood she was *also* being

disqualified based on her 2013 claim year when she received the overpayment decision. The overpayment decision on the 2013 claim year was issued on December 23, 2014, which was after the date to appeal the disqualification decisions. The Claimant subsequently appealed all three decisions, although she has withdrawn the appeal of the 2014 disqualification. By coincidence the 12/12/2014 decision and the 12/15/2014 both had reference number "05."

We note that in her decision on the overpayment the Administrative Law Judge twice misidentified the overpayment decisions (Issued December 23, 2014 reference 06) as being issued on December 12, 2014, reference 05.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.6 provides:

2. *Initial determination.* ... 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 begins 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 - but not conclusive - evidence of the date of mailing.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ... appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service."

The very unusual course of proceedings in this matter leads us to conclude that enforcement of the ten-day filing period would, in this instance, deny the Claimant a reasonable opportunity to appeal. In a matter of days the Claimant received two decisions. Both decisions were about quitting, both were about the same employer, both were given the reference number "Ref 05." These coincidences made it quite difficult to recognize that the decisions were about different things. The first one was about the 2013 benefit year and the second one about the 2014 benefit year. When receiving a decision in late 2014, it is quite surprising to learn that the decision is about something that happened a year before. Thus the Claimant, who does not

challenge her 2014 quit, did not appeal because she thought she was being notified about her recent quit. Even recognizing that a claimant has a responsibility to update the agency about the reasons for being unemployed, and that this Claimant may ultimately be responsible for the delay in the decision, the fact remains that the decision coming about a year later is unexpected. These factors, and in particular the coincidence of the same employer and same Ref number, makes it confusing for even people experienced in the unemployment field, as indeed even the Administrative Law Judge misidentified the decision appealed in the overpayment case. We confess that it has been confusing to the Board. Naturally, we'd expect the Claimant to figure out the difference once the overpayment decision was issued, but by then the appeal deadline had run. All this was complicated by the fact that there appears to have been a single fact finding conference for both claim years. Under the unique circumstances of this case, we find that the Claimant was denied a reasonable opportunity to appeal.

We are unconvinced by the Claimant's assertion that some stipulation from 1984 involving a predecessor agency has any effect on today's decision. Even if judicial oversight has not been terminated, the stipulations concern an agency-wide change which already has taken place and would not be violated simply because one of the millions of claims decisions issued since 1984 was still confusing. The only role of the lack of the now-routine summary letter is that the decisions remain sufficiently confusing to mean a lack of reasonable opportunity to appeal. Had the decisions been so clear that any reasonable person would understand their effect, or if the Claimant in fact did understand them, then the lack of a summary letter would have zero impact on our decision as there would be no prejudice to substantial rights. As it is, we find the appeals timely and remand on the merits.

**DECISION:**

The administrative law judge's decision dated March 31, 2015 is **REVERSED AND REMANDED**. The decision of the administrative law judge is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall issue a decision on the merits of this case. The Administrative Law Judge may in the Administrative Law Judge's discretion conduct an additional hearing if the judge deems it necessary to develop issues that were not adequately addressed in the first hearing because of the disposition of the issue of timeliness. After the hearing, if any, the administrative law judge shall issue a decision that provides the parties appeal rights.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman