

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ANGELINE T DOUGLAS**  
Claimant

**APPEAL NO. 17A-UI-00523-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEABOARD FOOD**  
Employer

**OC: 02/07/16**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(c) – Voluntarily Quit to Care for Family Member  
Iowa Code section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Angeline Douglas filed an appeal from the January 3, 2017, reference 14, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Douglas had voluntarily quit on December 19, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 9, 2017. Ms. Douglas participated. Miriam Deenok represented the employer. Exhibits 1 through 4 and A through F and Department Exhibit D-2 were received into evidence. The administrative law judge took official notice of the agency's administrative record of Ms. Douglas' weekly claims.

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether Ms. Douglas' voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 3, 2017, Iowa Workforce Development mailed a copy of the January 3, 2017, reference 14, decision to Angeline Douglas at her last known address of record. The decision disqualified Ms. Douglas for benefits and relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Douglas had voluntarily quit on December 19, 2016 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by January 13, 2017 or received by the Appeals Section by that date. At the time the decision was mailed to Ms. Douglas at her address of record in Texas, Ms. Borger was not in Texas to receive it. Instead, Ms. Douglas had traveled to Florida to be with her elderly mother who was ill. Ms. Douglas remained in Texas. Ms. Douglas had not updated her mailing address with Iowa Workforce Development. Ms. Douglas had a neighbor acquaintance monitoring her mailbox. Ms. Douglas does not know the neighbor's name. The decision most likely reached Ms. Douglas' address of record in a timely manner, prior to the appeal deadline. Ms. Douglas was not there to receive it and respond to it. On January 17,

2017, Ms. Douglas spoke with a Workforce Development representative by telephone regarding the status of her claim and learned at that time of the decision that denied benefits. Ms. Douglas also learned at that time that any appeal would be late. Ms. Douglas wrote her appeal on January 18, 2017 and faxed it to the Appeals Bureau that same day. The Appeals Bureau received the appeal on January 18, 2017.

Ms. Douglas was employed by Seaboard Food as a full-time packaging laborer from August 22, 2016 until December 19, 2016, when she voluntarily quit to care for her elderly mother who was ill. Ms. Douglas's mother was in Miami, Florida. Seaboard Food is located in Oklahoma. Ms. Douglas traveled to Florida on December 19, 2016. Ms. Douglas' mother's condition subsequently improved, but Ms. Douglas elected to remain in Florida and look for work there. Ms. Douglas elected not to return to Seaboard to offer to return to the employment.

#### **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.

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 871 AC 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 871 IAC 24.35(1)(b).

Ms. Douglas filed her appeal by fax on January 18, 2017. The appeal was filed five days after the appeal deadline. 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 weight of the evidence establishes that Ms. Douglas would have had a reasonable opportunity to file a timely appeal if she had been in Borger, Texas to receive the decision and respond to it. However, Ms. Douglas had good cause for not being in Borger, Texas at the time. That good cause was the need to care for her ill mother in Florida. The administrative law judge finds good cause to treat the late appeal as timely appeal and concludes that he has authority to rule on the merits of the appeal.

Iowa Code § 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. Ms. Douglas voluntarily quit to care for her sick mother. Once her mother's condition improved, Ms. Douglas elected to remain with her mother in Florida and elected not to return to the employer in Oklahoma to offer her services. Ms. Douglas is disqualified for benefits until she has worked in and been paid insured wages equal to ten times her weekly benefit amount. Ms. Douglas must meet all other eligibility requirements. The employer's account shall not be charged.

In light of the decision disqualifying Ms. Douglas in connection with the separation from the employment, the administrative law judge concludes it is not necessary to further consider the able and available issues that were added to the hearing notice.

**DECISION:**

There is good cause to treat the late appeal as a timely appeal. The January 3, 2017, reference 14, decision is affirmed. The claimant voluntarily quit on December 19, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid insured wages equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs