

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY R DOWNS
Claimant

APPEAL NO. 12A-UI-10000-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

**OC: 02/06/11
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
Section 96.5-1-j—Separation from Temporary Employment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 21, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 11, 2012. Claimant participated. Employer participated by Stacy Navarro, human resources coordinator. The record consists of the testimony of Jeffrey Downs and the testimony of Stacy Navarro. Official notice is taken of agency records.

ISSUES:

Whether the claimant filed a timely appeal; and
Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On March 21, 2011, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by March 31, 2011, or received by the Appeals Section on that date. The claimant's appeal was filed on August 16, 2012. The claimant never received a copy of the representative's decision.

The employer is a temporary staffing agency. The claimant accepted an assignment from the employer on March 22, 2010. He worked as a maintenance tech for one of the employer's clients. The assignment ended on April 30, 2010. The claimant asked for another assignment within three days of the end of this assignment.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 871 IAC 26.2(96)(1) and 871 IAC 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 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 not have a reasonable opportunity to file an appeal postmarked as timely.

The administrative law judge concludes that failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was either due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2) or agency error in sending out the decision. Since the claimant did not receive the decision, he did not have a reasonable opportunity to appeal the decision. The administrative law judge accepts the claimant's testimony that he did not receive a copy of the decision. The appeal will be deemed to have been filed timely.

The administrative law judge also accepts the claimant's testimony that he asked for another assignment within three days after his assignment ended on April 30, 2010. The claimant testified that he asked someone in the employer's office right after his assignment ended. The employer does not have a record of that particular conversation. The employer did record a contact on January 28, 2011. It is reasonable that not every request for another assignment gets recorded. Because the claimant did ask for another assignment within three working days, he did not voluntarily quit his job. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 21, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs