

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW LOCHE

Claimant

ADVANCE SERVICES INC

Employer

APPEAL 20A-UI-09921-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: APPELLANT (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.6(2) – Timely Appeal

Iowa Code § 96.5(1)J – Request Reassignment

STATEMENT OF THE CASE:

On August 14, 2020, the claimant filed an appeal from the May 28, 2020, (reference 02) unemployment insurance decision that denied benefits based on failure to request a reassignment. The parties were properly notified about the hearing. A telephone hearing was held on September 28, 2020. Claimant participated. Employer participated through Melissa Lewien.

ISSUES:

Did the claimant timely appeal?

Did claimant request reassignment?

Did claimant quit employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 23, 2019. Claimant last worked as a full-time laborer. Claimants was placed by Advanced Services Inc. to work at a company called TURPAK. On March 2, 2020 claimant was hospitalized and was not released from the hospital until March 12, 2020. Claimant had a friend call TURPAK on March 4, 2020 and informed TURPAK that claimant was in the hospital. TURPAK notified Advances Services Inc. of that call. Claimant was separated from employment on March 10, 2020 when his employer, Advanced Services Inc. had not heard from claimant on March 5, 6, 9 and 10, 2020 and considered that claimant was a no call/no show and had quit employment. Claimant was never informed that his assignment had ended.

Claimant received the fact finding decision that denied his unemployment. Claimant testified he thought he received it in May. The fact finding decision denying benefits was dated May 28, 2020. Claimant filed his appeal of the fact finding decision on August 14, 2020. Claimant said that he called up “Job Service” and they told him to appeal.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, 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 evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The claimant's appeal was due on June 7, 2020. As June 7, 2020 was a Sunday claimant had until June 8, 2020 to file his appeal. The appeal was filed on August 14, 2020. Claimant's appeal was not timely.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The May 28, 2020, (reference 02) unemployment insurance decision is affirmed. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act


Even though claimant is not eligible for regular unemployment insurance benefits under state law, claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she

is eligible for such compensation for the week claimed. This decision does not address when claimant is eligible for PUA. For a decision on such eligibility, claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

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 about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>
<https://www.iowaworkforcedevelopment.gov/Pua-application>



James F. Elliott
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

je/scn