

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALTER S SATCHELL

Claimant

APPEAL NO: 13A-UI-11588-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 08/04/13

Claimant: Appellant (1-R)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 11, 2013, reference 01, that held he voluntarily quit without good cause attributable to his employer due to a non-work-related illness or injury on June 25, 2013, and benefits are denied. A telephone hearing was held on November 6, 2013. The claimant participated. Dave Dalmasso, HR, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on September 11, 2013 with an appeal deadline date of September 21. The claimant had moved and due to mail forwarding did not receive a department decision until about October 2. He submitted an appeal postmarked on October 10, 2013.

Claimant admits he did not see the appeal deadline date on the department decision. It was not until he called the department about the September 12 overpayment decision that he learned about on October 2 that he appealed. He did not have an explanation why he waited.

Claimant suffered a heart problem that led to a hospitalization and surgery in June 2013. The employer considered claimant separated from employment when his personal leave expired June 25 and claimant was unable to return to work.

Claimant was released by his doctor to return to work and he passed his Federal DOT physical about October 21.

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 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 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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal.

The claimant did have a reasonable opportunity to file a more timely appeal by noting the deadline date and reading the appeal instructions. The claimant offered no good cause for the appeal delay. While there was some delay due to mail forwarding for claimant getting the department decision, he was very vague about the timing of when he learned he was denied and then overpaid benefits

The best discernible evidence is he knew about the department benefit denial leading to the overpayment on October 2. Looking at the decision with a deadline date of September 21/22, he should have known to file a more timely appeal.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the issue of whether claimant is able and available for work is remanded for department fact finding. Since his unemployment claim is effective August 4, 2013 the issue is whether he had a doctor release by then, whether he resumed a search for work, what work he was searching for, and whether he waited to pass his DOT physical before searching for work.

Claimant had a serious heart problem that led to his employment separation on June 5, 2013, hospitalization and surgery. He was unable to return to work by June 25. He was vague about the doctor return to work release date. He did say he passed the Federal DOT physical on October 21.

DECISION:

The department decision dated September 11, 2013, reference 01, is affirmed. The claimant failed to file a timely appeal, and the department decision he claimant voluntarily quit without good cause on June 25, 2013 remains in force and effect. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The able and available for work issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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