

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KENNETH D REID**  
Claimant

**WALMART INC**  
Employer

**APPEAL NO. 20A-UI-03761-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1/R)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 95.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Kenneth Reid filed a late appeal from the April 15, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Agency representative's determination that Mr. Reid voluntarily quit on June 15, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 26, 2020. Mr. Reid participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A, B and C were received into evidence. The claimant waived any alleged defects in the hearing notice. The administrative law judge took official notice of the April 15, 2020, reference 01, decision. The administrative law judge determines it is necessary to take official notice also of the Agency's administrative record of whether Mr. Reid contacted the Agency to update his address of record.

**ISSUE:**

Whether there is good cause to treat Mr. Reid's late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: During the week of March 22-28, 2020, Kenneth Reid established an original claim for benefits that Iowa Workforce Development deemed effective March 22, 2020. At the time Mr. Reid applied for benefits, he provided an address of record that was on 11<sup>th</sup> Street in Des Moines. On April 7, 2020, Mr. Reid participated in an unemployment insurance fact-finding interview conducted by Administrative Law Judge Duane Golden. ALJ Golden would have told Mr. Reid that the decision would be mailed to him within the next several days.

On April 15, 2020, Iowa Workforce Development mailed the April 15, 2020, reference 01, decision to Mr. Reid at his last-known address of record, the address on 11<sup>th</sup> Street in Des Moines. The weight of the evidence in the record establishes that the decision arrived at the address of record in a timely manner, most likely within a day or two of the April 15, 2020

mailing date. The April 15, 2020, reference 01, decision disqualified Mr. Reid for benefits and relieved the employer's account of liability for benefits, based on the Agency representative's determination that Mr. Reid voluntarily quit on June 15, 2019 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by April 25, 2020 or be received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. April 25, 2020 was a Saturday and the next working day was Monday, April 27, 2020. Mr. Reid did not file an appeal by the April 27, 2020 extended appeal deadline.

On or after April 20, 2020, Mr. Reid traveled out of town on personal business. Mr. Reid returned home approximately nine or 10 days later. At that time, Mr. Reid collected his mail from the 11<sup>th</sup> Street that he shared with a friend. It was at that time that Mr. Reid collected the April 15, 2020, reference 01, decision. At some point in March or April 2020, after Mr. Reid established his claim for unemployment insurance benefits, Mr. Reid had relocated to a new residence on Country Cove Lane in Altoona. On May 4, 2020, Mr. Reid notified Iowa Workforce Development of the change of address. On May 5, 2020, Mr. Reid faxed to the Appeals Bureau his appeal from the April 15, 2020, reference 01, decision. Mr. Reid referenced the Altoona address in his appeal letter. The Appeals Bureau received the appeal on May 5, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

The appeal in this matter was filed on May 5, 2020, when the Appeals Bureau received the faxed appeal.

The evidence in the record establishes 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). One question in this is 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence in the record establishes an untimely appeal. Mr. Reid was not a reliable historian with regard to dates and details relevant to the filing of the appeal and provided internally inconsistent testimony. The evidence establishes that the April 15, 2020, reference 01, decision was mailed to the appropriate last-known address of record on April 15, 2020 and was received at that address in a timely manner, most likely within a day or two of the April 15 mailing date. The evidence establishes that Mr. Reid subsequently traveled out on town on April 20, 2020, without reviewing or responding to the mail that had accumulated at the Des Moines address of record. In other words, the evidence establishes that Mr. Reid had a reasonable opportunity to file an appeal by the April 27, 2020 deadline, but denied himself that


opportunity by not dealing with his mail before he left town following delivery of the April 15, 2020 to the Des Moines address of record. When Mr. Reid returned home at the end of April 2020, he collected his mail from the Des Moines address of record and at that time opened and reviewed the April 15, 2020, reference 01, decision. Mr. Reid then further delayed the filing of his appeal to May 5, 2020. The weight of the evidence establishes a late appeal that was late due to Mr. Reid's failure to attend to his mail in a timely manner. Neither Iowa Workforce Development nor the United States Postal Service made the appeal late. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the April 15, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). The April 15, 2020, reference 01, decision remains in effect.

#### DECISION:

The claimant's appeal from the April 15, 2020, reference 01, decision was untimely. The April 15, 2020, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the Agency representative's determination that the claimant voluntarily quit on June 15, 2019 without good cause attributable to the employer, remains in effect.

This matter is remanded to the Benefits Bureau for determination of whether the claimant requalified for benefits subsequent to his June 15, 2019 separation from Walmart. Such determination will need to include a determination of whether the work the claimant performed for Trans Iowa, L.C., was employment versus independent contracting.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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James E. Timberland  
Administrative Law Judge

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May 28, 2020  
Decision Dated and Mailed

jet/mh