

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SCOTT P FENN
Claimant

ERIC L CALEF
Employer

APPEAL NO. 21A-UI-05521-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/27/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 29, 2021, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 26, 2021. The claimant did participate. The employer did participate through Eric Calef. Claimant and employer agreed to waive time and notice and additionally address the separation issue between the parties

ISSUES:

Whether the appeal is timely?

Whether claimant quit for good cause attributable to employer?

Whether claimant is able and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on January 29, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 8, 2021. The appeal was not filed until February 10, 2021, which is after the date noticed on the disqualification decision. Claimant stated he did not receive the decision although he stated he'd put in a change of address with the USPS at the time of his move across the street.

Claimant worked as a full time painter for employer from October of 2019 through August of 2020. Claimant's last day at work was August 17, 2020. Claimant stated that he quit at that time because pain became unbearable in his back and hip. Claimant asserted that he thought the pain was caused at work when he fell off a ladder approximately 6-8 weeks earlier. Claimant stated he did not go to a doctor for at least 6 weeks since the date of the fall. Employer stated he was not alerted of a fall at work. Claimant did not file a worker's compensation claim in this matter.

Employer stated that claimant complained of a hip injury since the time of his hire.

Claimant's last day of work was August 17, 2020. Claimant did not call or show for work for a few days after, and when employer called to check on claimant, employer was told of claimant's back and hip problem preventing him from returning to work.

Claimant stated that his back problem causes him great pain and he now walks with a walker. He stated he is not able and available for work at this time.

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 begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See,

Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because his back and hip was hurting too much for him to continue work. Claimant did not establish that his injury was work-related nor did he establish that his quit was attributable to work. Rather, claimant's quit was attributable to claimant's back pain.

DECISION:

The January 29, 2021, reference 01, decision is affirmed. The appeal in this case was deemed timely, but the decision of the representative remains in effect as the claimant did not voluntarily quit his job with good cause attributable to employer.



Blair A. Bennett
Administrative Law Judge

April 30, 2021
Decision Dated and Mailed

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