

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC D HANSEN
Claimant

APPEAL NO. 16A-UI-01773-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 12/13/15
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(j) – Voluntary Quit from Temporary Employment Agency
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Eric Hansen filed an appeal from the January 15, 2016 (reference 01) decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Hansen voluntarily quit the employment on December 2, 2015; without good cause attributable to the employer. After due notice was issued, a hearing was held on March 21, 2016. Mr. Hansen participated. Rhonda Hefter De Santisteban represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-01774-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A through H into evidence.

ISSUES:

Whether the appeal from the January 15, 2016 (reference 01) disqualification decision was timely.

Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 15, 2016, Iowa Workforce Development mailed a copy of the January 15, 2016 (reference 01) decision to claimant Eric Hansen as his last-known address of record. The decision disqualified Mr. Hansen for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Hansen voluntarily quit the employment on December 2, 2015 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by January 25, 2016 or received by the Appeals Section by that date. Mr. Hansen received the decision on January 18, 2016. Mr. Hansen read the decision but did not take any steps to file an appeal from the decision by the January 25, 2016 appeal deadline.

On February 1, 2016, Iowa Workforce Development mailed a February 1, 2016 (reference 03) decision to Mr. Hansen. That decision held that Mr. Hansen was overpaid benefits and had to repay benefits. The overpayment decision had a February 11, 2016 appeal deadline.

On February 9, 2016, Mr. Hansen drafted his appeal letter and faxed the appeal letter to the Appeals Bureau. The Appeals Bureau received Mr. Hansen's faxed appeal on February 9, 2016. Mr. Hansen included a copy of the reference 01 disqualification decision and the reference 03, overpayment decision to his appeal. Mr. Hansen also included a December 31, 2015 (reference 02) decision that had allowed benefits to him, provided he met all other eligibility requirements, based on his February 2015 separation from Tyson Fresh Meats, Inc.

Mr. Hansen also mailed an appeal on February 10, 2016. The mailed appeal is postmarked February 10, 2016.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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, subsection 10, 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 871 AC 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 871 IAC 24.35(1)(b).

Mr. Hansen's appeal was filed on February 9, 2016, 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). 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 Mr. Hansen did have a reasonable opportunity to file an appeal from the January 15, 2016, reference 01, decision by the January 25, 2016, but failed to take any action on the matter until February 9, 2016. Mr. Hansen's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause under the law to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the lower decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The January 15, 2016 (reference 01) decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the December 2, 2015 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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