

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA M HARTSON
Claimant

APPEAL NO. 13A-UI-07820-JTT

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

**CLINTON STAFFING COMPANY
ALLSTAR STAFFING**
Employer

**OC: 09/23/12
Claimant: Appellant (1)**

Iowa Code Section 96.5(1)(j) – Temporary Employment Separation
Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.5(1)(g) – Requalification for Benefits

STATEMENT OF THE CASE:

Donna Hartson appealed from an unemployment insurance decision dated May 10, 2013, reference 01, that denied benefits in connection with an April 11, 2013 separation from Clinton Staffing Company. A telephone hearing was scheduled for August 9, 2013. Ms. Hartson participated. The employer submitted documents in lieu of participating in the hearing and the employer's documents were received into the record as Exhibit One. Exhibits A, B and C and Department Exhibit D-1 were received into evidence.

ISSUES:

Whether Ms. Hartson's appeal from the May 10, 2013, reference 01, decision was a timely appeal. It was not.

Whether Ms. Hartson has requalified for benefits. She has not.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. On May 10, 2013, Iowa Workforce Development mailed two decisions to Donna Hartson at her last-known address of record. One of those decisions was the reference 01 decision that denied benefits based on a conclusion that Ms. Hartson had voluntarily quit her employment with Clinton Staffing Company/Allstar Staffing on April 11, 2013 by failing to contact the temporary employment first within three working days of completing an assignment. The May 10, 2013, reference 01, decision contained a warning that an appeal from the decision must be postmarked no later than May 20, 2013 or received by Iowa Workforce Development by that date. Ms. Hartson received the May 10, 2013, reference 01, decision in a timely manner, prior to the deadline for appeal, but did not file an appeal by the May 20, 2013 deadline. On June 29, 2013, Ms. Hartson drafted an appeal memo. Ms. Hartson mailed her appeal in an envelope that bears a July 1, 2013 postmark.

Mr. Hartson performed additional work for Clinton Staffing Company/Allstar Staffing Company after the April 11, 2013 separation. Ms. Hartson submitted documentation for the appeal hearing that indicates that the employer paid her additional gross wages totaling \$924.38 for work performed in May and the first two days of June. Ms. Hartson's weekly unemployment insurance benefit amount has been set at \$150.00.

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, 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).

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 the Ms. Hartson did have a reasonable opportunity to file a timely appeal from the May 10, 2013, reference 01, decision but that she did not file an appeal from that decision until July 1 2013. That is the date of the postmark on her mailed appeal.

The administrative law judge concludes that Ms. Hartson's 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. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and there is no legal authority that would allow the administrative law judge to disturb the May 10, 2013, reference 01, decision at this late date. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

Since Ms. Hartson, the employer, and the administrative law judge are all stuck with the May 10, 2013, reference 01, decision, the only remaining issue is whether Ms. Hartson has requalified for benefits since April 11, 2013, the separation date referenced in the May 10, 2013, reference 01, decision.

Iowa Code section 96.5-1-g provides:

An individual shall be disqualified for benefits:

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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Because Ms. Hartson's weekly unemployment insurance benefit amount is set at \$150.00, she would have to earn ten times that amount, \$1,500.00, after the April 11, 2013 separation in order to requalify for unemployment insurance benefits. Ms. Hartson has provided proof of earning a little less than two-thirds of the required amount. The documentation indicates that as of June 2, 2013, Ms. Hartson had not earned the necessary amount to requalify for benefits. If Ms. Hartson has additional wages for the period on or after June 3, 2013, that might bump her

over that ten times, or \$1,500.00, earnings requirement. If Ms. Hartson has such additional wages, she can provide such proof to Workforce Development, so that those wages may be considered. Even if Ms. Hartson is able to demonstrate sufficient earnings since the April 11, 2013 separation to requalify for benefits, she would still have to meet all other eligibility requirements before she would be able to receive benefits.

AMENDED DECISION:

The claimant's appeal from the May 10, 2013, reference 01, decision was untimely. The decision is affirmed for that reason. Effective April 11, 2013, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant had not requalified for benefits as of June 2, 2013. The claimant would have to meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css