

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ADAM M FRAISE
Claimant

APPEAL NO: 21A-UI-04014-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHAW ELECTRIC INC
Employer

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Adam Fraise, filed a late appeal from the July 10, 2020 (reference 01) decision that disqualified him for regular state benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on May 3, 2019 without good cause attributable to the employer. After due notice, a hearing was held on April 1, 2021. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-04015-JTT. Mr. Fraise participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A through E were received into evidence. The administrative law judge took official notice of the July 10, 2020 (reference 01) decision, the January 20, 2021 (reference 02) decision, the Agency's administrative record of benefits disbursed to the claimant (DBRO) and the claimant's March 19, 2021 application for Pandemic Unemployment Assistance (PUA).

ISSUE:

Whether the claimant's appeal from the July 10, 2020 (reference 01) decision was timely.

FINDINGS OF FACT:

The claimant is the appellant in this matter and in a companion appeal. On July 10, 2020, Iowa Workforce Development mailed the July 10, 2020 (reference 01) decision to the claimant's West Point, Iowa last-known address of record. The reference 01 decision disqualified the claimant for regular state benefits, based on the deputy's conclusion that the claimant voluntarily quit employment with Shaw Electric on May 3, 2019 without good cause attributable to that employer. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by July 10, 2020 or was received by the Appeals Bureau by that date. The decision included clear and concise instructions for filing an appeal. The decision included a toll-free customer service number that the claimant could call if he had questions regarding the decision. The decision included a toll-free number for the Appeals Bureau that the claimant could call if he had questions about filing an appeal from the decision. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal, but did not take steps to file an appeal by the July 20, 2020 appeal deadline.

On January 14, 2021, Iowa Workforce Development mailed the January 14, 2021 (reference 02) decision to the claimant's West Point, Iowa last-known address of record. The reference 02 decision held that the claimant was overpaid \$4,329.00 in regular state benefits for nine weeks between May 3, 2020 and July 4, 2020, based on the earlier decision that disqualified him for benefits in connection with his voluntary quit from Shaw Electric, Inc. The reference 02 decision stated that the decision would become final unless an appeal was postmarked by January 24, 2021 or was received by the Appeals Bureau by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. January 24, 2021 was a Sunday and the next working day was Monday, January 25, 2021. The decision included clear and concise instructions for filing an appeal. The appeal instructions included the link the claimant could use to file an online appeal. The decision included a toll-free customer service number that the claimant could call if he had questions regarding the decision. The decision included a toll-free number for the Appeals Bureau that the claimant could call if he had questions about filing an appeal from the decision. The claimant received the reference 02 decision in a timely manner, prior to the deadline for appeal, but did not take steps to file an appeal by the January 25, 2021 extended appeal deadline.

On January 20, 2021, the claimant sent the following email message to Iowa Workforce Development via the uiclaimshelp@iwd.iowa.gov email address:

I received a letter stating I had to pay back unemployment I received in 2020 due to me leaving shaw electric willingly. The problem I have with the is when I signed up for unemployment I filled it out saying I was self employed and lost work around the time everything shut down for covid 19. So I was not collecting saying I was let go from shaw electric. I was told due to covid 19 you could draw unemployment benefits if you were self employed and lost work due to covid 19 so that is what I was doing. Please let me know where I went wrong and what I can do to fix this problem.

On January 23, 2021, an IWD representative responded as follows:

I have reviewed your overpayment letter - I understand your situation - my advice is to appeal that overpayment decision - I would also suggest that you complete a Pandemic Unemployment Assistance Submission form for the weeks that you received unemployment - I have attached a link to our website that explains this program.

<https://www.iowaworkforcedevelopment.gov/pua-information>

On January 27, 2021, the claimant sent another email message via uiclaimshelp@iwd.iowa.gov:

So I am having a hard time finding where on the internet I appeal the overpayment decision? Also I do not know what weeks I claimed unemployment last year and cant find where I go back and fill out the Pandemic Assistance? Please help me haha

On January 27, 2021, the claimant located the link to file an online appeal, the link that had been set forth on the back of each decision the claimant received.

On January 27, 2021, the claimant completed and transmitted an online appeal from the reference 02 overpayment decision. The Appeals Bureau received the appeal on January 27, 2021 and treated it as also a late appeal from the July 10, 2020, reference 01, disqualification decision.

On January 30, 2021, an Iowa Workforce Development representative responded to the claimant's January 27 email and provided both the online appeal link and the PUA application link.

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 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 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 claimant's appeal from the July 10, 2020 (reference 01) decision was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the July 20, 2020 appeal deadline, but elected not to file an appeal by the appeal deadline. Indeed, the claimant delayed filing an appeal by several months, until after he received the January 14, 2021 (reference 02) overpayment decision. The appeal was filed on January 27, 2021. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). The claimant unreasonably delayed filing his appeal. Because the late filing of the appeal was not attributable to Iowa Workforce Development or to the United States Postal Service, 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 July 10, 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).

DECISION:

The claimant's appeal from the July 10, 2020 (reference 01) decision was untimely. The decision that disqualified the claimant for regular state benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on May 3, 2019 without good cause attributable to the employer, remains in effect.



James E. Timberland
Administrative Law Judge

April 8, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**