

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEJANDRO PEREZ
Claimant

SHORT STAFFED INC
Employer

APPEAL 20A-UI-12750-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)(j) – Temporary employment firm

STATEMENT OF THE CASE:

On October 14, 2020, Claimant filed an appeal from the July 28, 2020 (reference 01) unemployment insurance representative's decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 7 2020, at 10:00 a.m. Claimant and claimant's witness, Yussel Zayas, participated. Official notice is taken of agency records.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On July 7, 2020, a representative issued a decision, reference 01, which held claimant ineligible for unemployment insurance benefits. The decision states it would become final unless an appeal was postmarked by August 7, 2020, or received by the Appeals Section on that date. The claimant's appeal was sent through Iowa Workforce Development's Unemployment Insurance Online Appeal platform on October 14, 2020, more than two months later.

Claimant could not be sure when he received the representative's decision dated July 7, 2020 reference 01. Claimant checks and reads his mail on a daily basis. Claimant called Iowa Workforce Development and spoke to a representative after noticing he was no longer receiving benefits. Claimant stopped receiving benefits in July 2020. This conversation spurred him to file his appeal on October 14, 2020.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

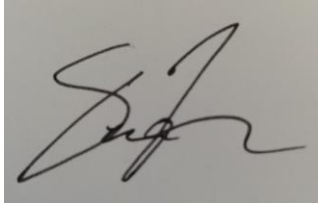
The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 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).

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 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 have a reasonable opportunity to file an appeal postmarked as timely.

The administrative law judge concludes that failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claim for unemployment insurance benefits.

DECISION:

The claimant failed to file a timely appeal from representative's decision regarding benefits dated July 28, 2020, reference 01. That decision, which concluded that the claimant was ineligible to receive unemployment insurance benefits, remains in full force and effect.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

December 21, 2020
Decision Dated and Mailed

Smn/mh