

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MEBRHIT MICHIAL
Claimant

ABM LTD
Employer

APPEAL NO. 20A-UI-07618-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(1) - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a late appeal from the May 27, 2020, reference 01, decision that disqualified her for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on November 23, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 12, 2020. The claimant, Mebrhit Michial, participated and presented additional testimony through Mengis Kifle. Greg Stearns represented the employer. Tigrinya-English interpreter Solomon Gebramedhin of CTS Language Link assisted with the hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the May 27, 2020, reference 01, decision.

ISSUES:

Whether the appeal 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 May 27, 2020, Iowa Workforce Development mailed the May 27, 2020, reference 01, decision to the claimant's last-known address of record. The decision disqualified the claimant for unemployment insurance benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on November 29, 2019 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by June 6, 2020. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal period would be extended to the next working day. June 6, 2020 was a Saturday. The next working day was Monday, June 8, 2020. The claimant received the decision in a timely manner in May 2020, prior to the deadline for appeal. The claimant does not read English and speaks little English. The claimant's native language is Tigrinya. The claimant's husband is bilingual in English and Tigrinya. The claimant's husband reads and understands English without difficulty. When the couple received the decision in May 2020, the claimant's husband translated the decision in its entirety so the claimant would understand the decision, including the appeal deadline information. The claimant

did not take any steps to file an appeal from the decision by the extended June 8, 2020 deadline. The claimant did not take any steps to file an appeal from the decision until July 1, 2020. On that date, the claimant's husband drafted an appeal letter and mailed the appeal letter. The correspondence bears a July 1, 2020 postmark.

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 evidence in the record establishes an untimely appeal. The appeal was filed on July 1, 2020, the postmark date. The claimant received the decision in a timely manner and had a reasonable opportunity to file an appeal by the appeal deadline. Despite the claimant's personal language barrier, the claimant had full and timely assistance from her bilingual spouse. Through that assistance, the claimant understood the May 27, 2020, reference 01, decision disqualified her for unemployment insurance benefits and that the decision included a deadline for appeal. The claimant elected not to take steps to appeal the decision by the extended June 8, 2020 deadline. Because the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was attributable to the claimant, and not attributable to Iowa Workforce Development or 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 May 27, 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 was untimely. The May 27, 2020, reference 01, decision that disqualified the claimant for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on November 23, 2019 without good cause attributable to the employer, remains in effect.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

August 19, 2020
Decision Dated and Mailed

jet/scn