

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THIAN KIM
Claimant

APPEAL NO: 12A-UI-00375-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

**OC: 11/13/11
Claimant: Appellant (1)**

Section 96.6-2-a – Timeliness of Appeal
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 20, 2011, reference 01, that held he voluntarily quit without good cause on November 10, 2011, and benefits are denied. A hearing was scheduled for February 16, 2012. The claimant did not participate though a Burmese interpreter was provided. Aureliano Diaz, HR Manager, was available to participate for the employer. Official Notice was taken of claimant's appeal form.

ISSUE:

Whether the claimant's appeal is timely.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The department mailed the decision that denied claimant benefits to his address of record on December 20, 2011. The decision has a warning that the appeal deadline date is December 30. Claimant submitted an appeal work to a local workforce center representative on January 9, 2012. Claimant does not speak English, and his native language is Burmese. He offered no reason for his late appeal.

Claimant failed to appear for the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . 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.

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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal.

Although claimant stated on his appeal that does not speak English and he requires a Burmese interpreter, he did not explain why his appeal was late. Absent a good cause for a late appeal, it is not considered timely and the department decision remains in force effect.

DECISION:

The department decision dated December 20, 2011, reference 01, is affirmed. The claimant failed to file a timely appeal, and the department decision that he is denied benefits for a

voluntary quit without good cause on November 10, 2011, remains in force and effect. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs