IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

SUSAN R KRIZ Claimant **WHIRPOOL CORPORATION** Employer	**APPEAL 19A-UI-08164-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/30/19** **Claimant: Appellant (4)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Susan R. Kritz, filed an appeal from the September 16, 2019 (reference 02) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 7, 2019. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibit 1 (Appeal letter) was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective June 30, 2019?
Is the claimant qualified for benefits based upon her temporary separation from the employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a full-time assembler for the employer. The claimant was off work due to kidney stones and maintained contact with the employer. She was not on a formal leave of absence. She was released by her doctor to return to work and presented the employer proof that she could return to work without restrictions on July 3, 2019, after visiting her doctor on July 1, 2019. The employer did not allow the claimant to return to work until July 17, 2019 because work was not available. She has resumed full-time employment.

An initial unemployment insurance decision (Reference 02) resulting in disqualification of benefits was mailed to the claimant's last known address of record on September 16, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 26, 2019. The claimant's mailbox has been knocked over so her mail is held at a local post office with limited hours. She did not receive the initial decision in the mail and first learned of it when visiting IWD for RESEA/ reemployment services on October 17, 2019. She filed her claim the same day (Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

Iowa Code section 96.6(2) provides, in pertinent part:

> Filing – determination – appeal.
> 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.

Iowa Admin. Code r. 871-24.35(2) provides:

> Date of submission and extension of time for payments and notices.
> (2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.
> a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
> b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
> c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
> d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n,* 212 N.W.2d 471, 472 (Iowa 1973). The claimant learned of the initial decision at an October 17, 2019 RESEA appointment, which was the first notice of disqualification. She filed her appeal on the same day. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant is qualified for benefits based upon her temporary separation of employment.

Iowa Code section 96.5(1)d provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

The undisputed evidence is the claimant was temporary off work for a personal medical condition. On July 1, 2019, she presented the employer medical documentation reflecting she had been released to return to work effective July 3, 2019 without restriction. Regular work was not available until July 17, 2019. Accordingly, the administrative law judge concludes the claimant is allowed benefits for the period of July 3-16, 2019, provided she is otherwise eligible.

Iowa Admin. Code r. 871-24.23(23) provides: Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work. (23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Effective July 17, 2019, claimant is ineligible for unemployment because she is performing work full-time.

DECISION:

The September 16, 2019 (reference 02) initial decision is modified in favor of the claimant. The appeal is timely. The claimant is qualified for benefits based upon her temporary separation for the period of July 1-16, 2019 provided she meets all other requirements. Effective July 17, 2019, the claimant is ineligible for benefits due to full-time employment.

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Jennifer L. Beckman
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Decision Dated and Mailed

jlb/scn