

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERISH M HERNANDEZ
Claimant

APPEAL NO. 15A-UI-04466-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 01/18/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Cherish Hernandez filed an appeal from the February 9, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Hernandez had voluntarily quit on January 22, 2015 by failing to contact the employer within three working days of the completion of an assignment to request a new assignment. After due notice was issued, a hearing was held on May 11, 2015. Ms. Hernandez participated. Sarah Fiedler represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

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 February 9, 2015, Iowa Workforce Development mailed a copy of the February 9, 2015, reference 01, decision to claimant Cherish Hernandez at her last-known address of record. The decision disqualified Ms. Hernandez for benefits and relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Hernandez had voluntarily quit on January 22, 2015 by failing to contact the employer within three working days of the completion of an assignment to request a new assignment. The decision carried a warning an appeal from the decision must be postmarked by February 19, 2015, or received by the Appeals Section by that date.

Ms. Hernandez asserts that she did not receive the decision that was mailed to her on February 9, 2015 due to a neighbor tampering with her mail. Ms. Hernandez asserts that she learned of the decision when she contacted Workforce Development at the beginning of March 2015. Ms. Hernandez learned not only that that decision had disqualified her for benefits, but that the deadline for appealing the decision has passed. The Workforce Development representative who spoke to Ms. Hernandez at the beginning of March encouraged Ms. Hernandez to get her appeal filed and provided Ms. Hernandez with

appropriate instructions for filing an appeal. Ms. Hernandez put off filing an appeal until the middle of April 2015. On April 12, Ms. Hernandez drafted her appeal. On April 13, Ms. Hernandez faxed her appeal. The Appeals Section received the appeal on April 13, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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, subsection 10, 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 871 AC 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 871 IAC 24.35(1)(b).

Ms. Hernandez's appeal was filed on April 13, 2015, when the Appeals Section receive the appeal by fax.

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). 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).

In the absence of the evidence to indicate otherwise, the administrative law judge concludes that Ms. Hernandez did not receive the decision when it was mailed to her, but learned of the decision at the beginning of March 2015. The record shows that the appellant did not have a reasonable opportunity to file an appeal by the February 19, 2015 deadline. She did however have a reasonable opportunity to file a timely appeal within a reasonable time after learning of the decision and receiving appeal instructions at the beginning of March.

No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

The evidence indicates that Ms. Hernandez unreasonably delayed from the beginning of March 2015 to the middle of April 2015 to file her appeal. The evidence in the record fails to establish good cause to treat the late appeal as a timely appeal.

Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), Ms. Hernandez has failed to preserve her right to challenge the February 9, 2015, reference 01, decision and the administrative law judge lacks jurisdiction to disturb that 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 February 9, 2015, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on January 22, 2015 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs