

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**EDWARD W ELLIOTT**  
Claimant

**APPEAL NO. 21A-UI-07435-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ATLANTIC BOTTLING CO**  
Employer

**OC: 04/12/20**  
**Claimant: Appellant (2R)**

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Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept other Employment  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a late appeal from the February 22, 2021, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on August 28, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 21, 2021. Claimant participated. Shirley Jones represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the February 22, 2021, reference 01, decision.

**ISSUES:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.  
Whether the claimant voluntarily quit the employment without good cause attributable to the employer.  
Whether the claimant voluntarily quit the employment for the sole basis of accepting other employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Atlantic Bottling as a full-time Merchandizer from November 2018 until August 28, 2019, when he voluntarily quit. The claimant final wage with Atlantic Bottling was \$17.00. an hour. The claimant worked a 40-hour work week. The claimant's merchandizer duties involved building product displays in retail stores. The work was physically taxing in nature. The claimant 62 years old. At the time the claimant gave his two-week quit notice, he had accepted work with another company, Gate Guard Oil Service. The claimant notified his supervisor at Atlantic Bottling that he had another opportunity that he could not refuse. At the time the claimant left the Atlantic Bottling employment, that employer deemed the claimant a valued employee and continued to have work available for him. The claimant worked to the end of his notice period and then voluntarily separated from the Atlantic Bottling employment.

The claimant did in deed go to work for Gate Guard Oil Service. That work paid \$150.00 per day and was less physically taxing. The claimant performed the work as part of a two-person team, with his wife being the other member of the team. The work involved monitoring a gate at an assigned facility. Though the claimant and Gate Guard characterized the relationship as independent contracting, it appears instead to have been employment. There was no contract. The claimant did not have to make any investment or bring any equipment to the relationship. The claimant received his pay biweekly. There was no way for the claimant to make more than the \$150.00 per diem wage. There was no way for the claimant to suffer liability or loss beyond the loss of the daily wage. The relationship left the claimant responsible for payroll taxes. Gate Guard provided a 1099 tax form at the end of the year.

On February 22, 2021, Iowa Workforce Development mailed the February 22, 2021, reference 01, decision to the claimant at his Altoona last-known address of record. The claimant was working in Texas at the time and had made arrangements with the United States Postal Service to have his mail forwarded to him in Texas. The reference 01 decision stated the decision would become final unless an appeal was postmarked by March 4, 2021 or was received by the Appeals Bureau by that date. The claimant did not receive the reference 01 decision until March 10, 2021. On March 11, 2020, the claimant's wife drafted an appeal on the claimant's behalf and faxed it to Iowa Workforce Development. The appeal was directed to the Benefits Bureau, which date-stamped the appeal as received on March 12, 2021 and forwarded the appeal to the Appeals Bureau. The Appeals Bureau received the appeal on March 16, 2021.

#### **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). 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 evidence establishes good cause to treat the late appeal as a timely appeal. The claimant did not receive the decision in the mail until March 10, 2021, which was after the March 4, 2021 appeal deadline. The claimant promptly filed an appeal. The late filing of the appeal was attributable to the United States Postal Service delay in forwarding the correspondence to the claimant. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge had jurisdiction to enter a decision based on the merits of the appeal.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

An individual shall be disqualified for benefits:

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

The claimant voluntarily quit the employment without good cause attributable to the employer for the sole purpose of accepting other employment and performed work in the other employment. The employer's account shall not be charged for benefits. The claimant is eligible for benefits, provided he is otherwise eligible. The wages credits from the Atlantic Bottling employment shall be assed to the unemployment compensation fund.

**DECISION:**

The February 22, 2021, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer for the sole purpose of accepting other employment and performed work in the other employment. The employer's account shall not be charged for benefits. The claimant is eligible for benefits, provided he is otherwise eligible. The wages credits from the Atlantic Bottling employment shall be assed to the unemployment compensation fund.

**REMAND:**

This matter is **remanded** to the misclassification unit for further action as that unit deems appropriate regarding the claimant's relationship with Gate Guard Oil Service.



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James E. Timberland  
Administrative Law Judge

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June 1, 2021  
Decision Dated and Mailed

jet/kmj