

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KING A JAMES
Claimant

APPEAL NO. 17A-UI-06584-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 03/19/17
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(j) – Temporary Employment Separation
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

King James filed an appeal from the April 12, 2017, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. James had voluntarily quit on November 30, 2016 without good cause attributable to the employer by failing to contact the employer within three working days of the completion of a work assignment. After due notice was issued, a hearing was held on July 17, 2017. Mr. James participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether Mr. James separated from the employment for a reason that disqualifies him for benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services, Inc. is a temporary employment agency. King James was employed by Express Services and last performed work for Express Services in a full-time temporary work assignment at Michael's Bakery in Mason City. Mr. James' work hours in the assignment were 10:00 a.m. to 8:00 p.m., Monday through Friday. Mr. James last performed work in the assignment on November 30, 2016. On that day, the client business sent Mr. James home around 5:00 p.m., after a disagreement between Mr. James and his supervisor, Ruth, regarding Mr. James' need to use the restroom due to illness. Upon being sent home from the assignment, Mr. James immediately called Express Services, but Express Services had already closed for the day. On December 1, an Express Services representative called Mr. James and notified him that Michael's Bakery had ended the assignment. During the call, Mr. James asked for additional work, but Express Services did not have an additional assignment available for him.

Mr. James established a new original claim for unemployment insurance benefits that was effective March 19, 2017. On April 12, 2017, Iowa Workforce Development mailed the April 12, 2017, reference 03, decision to Mr. James at his last-known address of record. That address of record at was 309 North Adams Avenue, Apartment 4, Mason City, Iowa 50401-3160. The reference 03 decision disqualified Mr. James for benefits and relieved Express Services' account of liability for benefits, based on the claims deputy's conclusion that Mr. James had voluntarily quit on November 30, 2016 without good cause attributable to the employer by failing to contact the employer within three working days of the completion of a work assignment. The April 12, 2017, reference 03, decision stated that an appeal from the decision must be postmarked by April 22, 2017 or be received by the Appeals Bureau by that date.

Mr. James did not receive the April 12, 2017, reference 03, decision. Mr. James did not become aware of the decision until June 15, 2017. Mr. James was incarcerated from March 27, 2017 until June 20, 2017. While Mr. James was incarcerated, his apartment at 30 North Adams Avenue in Mason City was burglarized. On June 15, Mr. James contacted Express Services to let the employer know that he was about to be released from custody and that he was looking for work. On that same day, Mr. James contacted the Mason City Workforce Development Center to schedule an appointment for assistance in obtaining employment. At that time, an agency representative told Mr. James that his claim was locked, based on a decision and conclusion that Mr. James had voluntarily quit the Express Services employment. Upon Mr. James release from custody on June 20, 2017, he contacted the Express Services branch in Mason City to further the discussion about gaining employment.

On June 29, 2017, Mr. James went to the Mason City Workforce Development Center, completed an appeal form, and delivered the completed appeal form to the staff at the Center. The Appeals Bureau received the appeal by fax that same day. On the appeal form, Mr. James updated his address to 304 Tunnel Boulevard, Chattanooga, Tennessee 37411. On the appeal form, Mr. James provided the following explanation for the lateness of his appeal: "My home was burglarized and have not seen. I did not receive the previous decision made on 4/12/17 due to me being ill and in the hospital for evaluation and legal problems." The Mason City Workforce Development Center staff faxed the appeal to the Appeals Bureau that same day and the Appeals Bureau received the appeal that same day.

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 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).

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 record shows that Mr. James did not have a reasonable opportunity to file a timely appeal by the April 22, 2017 appeal deadline. Mr. James had not received the April 12, 2017, reference 03, decision. Mr. James still has not received a copy of the decision. Mr. James learned about the decision on June 15, 2017, while he was coming to the end of a period of incarceration that began in March 2017. Mr. James was unable to take any steps to appeal the decision until he was released from custody on June 20, 2017. Mr. James went to the Workforce Development Center on June 29, 2017, nine days following his release from custody, and completed, delivered and filed an appeal that day.

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).

After considering the circumstances of the case, that administrative law judge concludes there is good cause to treat the late appeal as a timely appeal. The claimant did not learn of the

decision until June 15, 2017 and was at that time unable to do anything about appealing the decision. The claimant took steps to file an appeal within nine days of his release from custody. While it would have been better to make contact with Workforce Development sooner after his release from custody, the administrative law judge concludes that Mr. James did not unreasonably delay filing his appeal. Because the administrative law judge finds good cause to deem the appeal timely, the administrative law judge has jurisdiction to rule on the merits of the appeal regarding the separation.

Iowa Code section 96.5(1)j 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:

j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(2) To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence in the record establishes a November 30, 2016 separation that was for good cause attributable to Express Services. The employer did not register a telephone number for the hearing and did not present any evidence to rebut Mr. James' testimony. The evidence establishes that the client business ended the assignment effective November 30, 2016. The evidence in the record does not establish misconduct in connection with the assignment or the employment. See Iowa Code section 96.5(2)(a) (regarding disqualification based on discharge for misconduct in connection with the employment) and Iowa Administrative Code section 871-24.32(1)(a) (defining misconduct). The evidence in the record establishes that Mr. James made immediate contact with the temporary employment form on November 30, 2017 and requested additional work the next day during conversation with an Express Services representative. The employer presented no evidence to establish that the employer met the notice requirement set forth in Iowa Code section 96.5(1)(j). Accordingly, Mr. James fulfilled the contract of hire effective November 30, 2016, when he completed the assignment at Michael's Bakery. Mr. James eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 12, 2017, reference 03, decision is reversed. The claimant's appeal was timely. The claimant's November 30, 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs