

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HEATHER L RIES
Claimant

ELLSWORTH MUNICIPAL HOSPITAL
Employer

APPEAL NO. 17A-UI-13091-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/05/17
Claimant: Appellant (2)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 1, 2017, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 12, 2018. The claimant did participate. The employer did participate through Cheri Geitz. Claimant's Exhibits A and E were admitted to the record.

ISSUES:

Whether the appeal is timely?

Whether claimant quit for good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on December 1, 2017. Claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 11, 2017. The appeal was not filed until December 19, 2017, which is after the date noticed on the disqualification decision.

A few days before claimant received this decision after she'd received another IWD decision that indicated that claimant was eligible to receive benefits from her more recent job separation. Claimant stated that she thought that her most recent job separation would be guiding, and for that reason she didn't appeal this decision. After claimant received additional documentation from IWD that indicated claimant must be eligible under all decisions to receive benefits, she called IWD to further inquire. After inquiry, claimant filed an appeal in this matter on December 19, 2017.

Claimant voluntarily quit her job on June 25, 2017, after putting in her 30 day notice of quit on May 29, 2017. Claimant had been hired to work day hours, and as needs of employer had changed, claimant was asked to work overnight hours. In order to accommodate employer's wishes, claimant did agree to work the overnight hours for a six week period of time. That was

then extended to another six week period of time. It was after the extension of additional overnight work that claimant put in her resignation.

In addition to the changed hours, claimant also mentioned employer's forcing all employees to use PTO over a six week period. Employees could either take three unpaid days or use their PTO to cover these days where they were forced not to work. Claimant additionally stated that her supervisor often used foul language when talking to claimant. Although claimant stated she approached human resources about this, nothing was done by employer who stated that this was just the way the supervisor spoke.

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.

Iowa Code § 96.5-1 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.

The ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Claimant initially received a document stating that she was eligible to receive unemployment benefits as to Employer, City of Eldora, on or around November 27, 2017. Claimant subsequently received the document denying unemployment regarding her separation from Ellsworth Community Hospital on or around December 1, 2017. At this time, claimant chose not to inquire about the status of her unemployment claims. Although claimant's most recent decision was that she wasn't eligible to receive benefits, she didn't act on that decision for well over the prescribed ten days.

The administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to an Agency error. The administrative law judge further concludes that the appeal was therefore not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge does not have jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The December 1, 2017, reference 02, decision is reversed. The appeal in this case was deemed timely, and the claimant's voluntary quit was for good cause attributable to employer. The claimant is eligible to receive benefits should she be otherwise qualified.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn