

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JUANITHA A NASOD**  
Claimant

**APPEAL NO. 21A-UI-09107-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLS AND DALES CHILD DEVELOPMENT**  
Employer

**OC: 04/19/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant, Juanitha Nasod, filed a late appeal from the March 3, 2021, reference 02, decision that disqualified her for regular 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 employment with Hills and Dales Child Development on March 12, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 16, 2021. The claimant participated. Carol Boge represented the employer. Employer witness Corlenda Allen was available, but did not testify. There were four appeal matters set for a consolidated hearing: 21A-UI-09107-JTT, 21A-UI-09108-JTT, 21A-UI-09111-JTT and 21A-UI-09114. Claimant's Exhibit 1, the online appeal, and Employer's Exhibits A-1, A-2 and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, the reference 02, 03, 04 and 05 decisions, the administrative law judge decision in Appeal Number 20R-10737-HP-T, the claimant's March 31, 2021 application for PUA benefits, and the deputy's April 30, 2021 notes regarding the PUA determination.

**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 March 3, 2021, Iowa Workforce Development mailed the March 3, 2021, reference 02, decision to the claimant at her Davenport last-known address of record. The reference 02 decision disqualified the claimant for regular benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit employment with Hills and Dales Child Development on March 12, 2020 without good cause attributable to the employer. The reference 02 decision stated that it would be final unless an appeal was postmarked by March 13, 2021 or was received by the Appeal Section by that date. The reference 02 decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 13, 2021 was a Saturday and the next working day was Monday, March 15, 2021. The claimant received the

decision in a timely manner. The claimant did not file appeal from the decision by the March 15, 2021 extended deadline or at any time prior to April 1, 2021.

On March 22, 2021, IWD mailed the reference 04 and reference 05 overpayment decision to the claimant. On March 23, 2021, IWD mailed the reference 02 overpayment decision to the claimant. All three overpayment decisions referenced the earlier disqualification decision regarding the claimant's separation Hills and Dales as the basis for the overpayment decision. All three overpayment decision had an April 2, 2021 deadline for appeal.

On March 31, 2021, the claimant applied for Pandemic Unemployment Assistance (PUA).

On April 1, 2021, the claimant completed and transmitted an online appeal from the overpayment decisions. The claimant referenced her separation from Hills and Dales Child Development in the appeal. The Appeals Bureau received the appeal on April 1, 2021 and treat as an appeal from all three overpayment decisions, as well as a late appeal from the reference 02 disqualification decision.

#### **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 in the record establishes an untimely appeal from the March 3, 2021, reference 02, disqualification decision. The claimant received the reference 02 decision in a timely manner, had a reasonable opportunity to file an appeal by the March 15, 2021 extended deadline, but did not file an appeal until April 1, 2021. The late filing of the appeal was attributable to the claimant and was not attributable to IWD error or misinformation or to delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal from the reference 02 decision was an untimely appeal, 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 claimant's appeal from the March 3, 2021, reference 02, is untimely. The decision that disqualified the claimant for regular 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 March 12, 2020 without good cause attributable to the employer, remains in effect.



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James E. Timberland  
Administrative Law Judge

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June 28, 2021  
Decision Dated and Mailed

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