

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHAYLENE K LAI
Claimant

DOLGENCORP LLC
Employer

APPEAL NO. 20A-UI-04038-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Shaylene Lai filed a late appeal from the April 30, 2020, reference 01, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Lai voluntarily quit on September 25, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 1, 2020. Ms. Lai participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX and the April 30, 2020, reference 01, decision.

ISSUES:

Whether there is good cause to treat the appeal as timely.
Whether the claimant was overpaid regular state benefits.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 30, 2020, Iowa Workforce Development mailed the April 30, 2020, reference 01, decision to Shaylene Lai at her last-known address of record. The decision disqualified Ms. Lai for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Lai voluntarily quit on September 25, 2019 without good cause attributable to the employer. The decision stated that an appeal from the decision must be postmarked by May 10, 2020 or be received by the Appeal Section by that date. The 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. May 10, 2020 was a Sunday and the next working day was Monday, May 11, 2020. Ms. Lai received the decision in a timely manner, prior to the deadline for appeal. The decision stated that an appeal from the decision must be postmarked

by May 10, 2020 or be received by the Appeal Section by that date. The 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. May 10, 2020 was a Sunday and the next working day was Monday, May 11, 2020.

Ms. Lai received \$585.00 in regular state benefits for five weeks between March 22, 2020 and April 25, 2020. Ms. Lai also received \$2,400.00 in Federal Pandemic Unemployment Compensation for four weeks between March 29, 2020 and April 25, 2020.

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 first 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 that Ms. Lai's appeal was untimely. Ms. Lai received the decision in a timely manner, prior to the deadline for appeal, but elected to wait until after the appeal deadline had passed to file her appeal. The appeal was filed on May 14, 2020, the day the Appeals Bureau received the electronically transmitted appeal. The weight of the evidence establishes that the delay in filing the appeal was attributable to Ms. Lai and not attributable either to Iowa Workforce Development or to the United States Postal Service. Accordingly, there is not good cause under the law to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the April 30, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because the decision that disqualified Ms. Lai for benefits remains in effect, the \$585.00 in regular state benefits that Ms. Lai received for five weeks between March 22, 2020 and April 25, 2020 is an overpayment of benefits that Ms. Lai must repay.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because Ms. Lai is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$2,400.00 in FPUC benefits that Ms. Lai received for the four weeks between March 29, 2020 and April 25, 2020 constitute an overpayment of benefits that Ms. Lai must repay.

DECISION:

The claimant's appeal was untimely. The April 30, 2020, reference 01, decision that disqualified the claimant 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 September 25, 2019 without good cause attributable to the employer, remains in effect. The claimant is overpaid \$585.00 in regular state benefits for five weeks between March 22, 2020 and April 25, 2020. The claimant is overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation for four weeks between March 29, 2020 and April 25, 2020. The claimant must repay the overpaid state and federal benefits.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

June 19, 2020
Decision Dated and Mailed

jet/mh