

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTINA E CLEMENTS

Claimant

APPEAL NO. 18A-UI-06547-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 04/29/18

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Christina Clements filed an appeal from the June 4, 2018, reference 02, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Clements voluntarily quit on March 12, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 2, 2018. Ms. Clements participated. Melinda Karl represented the employer. Erica Brehm was on hand as a witness for the employer, but did not testify. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-06548-JTT. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

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 June 4, 2018, Iowa Workforce Development mailed a copy of the June 4, 2018, reference 02, decision to claimant Christina Clements at her last known address of record. The decision disqualified Ms. Clements for benefits and held the employer's account would not be charged for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Clements voluntarily quit on March 12, 2018 without good cause attributable to the employer. Ms. Clements received the decision in a timely manner, most likely within a couple days of the June 4, 2018 mailing date. The decision stated that an appeal from the decision must be postmarked by June 14, 2018 or be received by the Appeal Section by that date. The decision contained a toll-free customer service phone number that Ms. Clements could call if she had questions about the decision. The back of the decision contained a reminder of the appeal deadline. The back of the decision contained with clear and concise instructions for filing an appeal online via the Iowa Workforce Development website, for filing an appeal by email, for filing an appeal by fax, and for filing an appeal by mail.

On June 5, 2018, Iowa Workforce Development mailed a June 5, 2018, reference 03, decision. That decision held that Ms. Clements was overpaid \$211.00 in benefits for the week that ended

May 5, 2018, based on the earlier decision that disqualified her for benefits in connection with her separation from Casey's. Ms. Clements received the decision in a timely manner, most likely within a couple days of the June 5, 2018 mailing date. The overpayment decision carried a June 15, 2018 deadline for appeal.

Ms. Clements did not take any steps to file an appeal from the June 4, 2018, reference 02, disqualification decision by the June 14, 2018 appeal deadline applicable to that decision. On the morning of June 15, 2018, Ms. Clements electronically transmitted an appeal from both decisions to the Appeals Bureau. The Appeals Bureau received the appeal on June 15, 2018.

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).

Ms. Clements appeal from the June 4, 2018, reference 02, disqualification decision was filed on June 15, 2018, when the Appeals Bureau received the appeal that was electronically transmitted that same day.

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 Ms. Clements 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 Ms. Clements did have a reasonable opportunity to file a timely appeal from the June 4, 2018, reference 02, disqualification decision, but delayed filing her appeal until after the June 14, 2018 appeal deadline. The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of 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 June 4, 2018, reference 02, disqualification 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 June 4, 2018, reference 02, decision is affirmed. The claimant's appeal from the decision was untimely. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant voluntarily quit on March 12, 2018 without good cause attributable to the employer, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs