

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARIA E GARCIA-VEGA
Claimant

APPEAL NO. 20A-UI-11381-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHORT STAFFED INC
Employer

OC: 06/07/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Maria Garcia-Vega filed a late appeal from the July 29, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Garcia-Vega voluntarily quit on June 7, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 6, 2020. Ms. Garcia-Vega participated. Jessica Hinojosa represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the July 29, 2020, reference 01, decision.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 29, 2020, Iowa Workforce Development mailed the July 29, 2020, reference 01, decision to Maria Garcia-Vega at her last-known address of record. The July 29, 2020, reference 01, decision disqualified Ms. Garcia-Vega for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Garcia-Vega voluntarily quit on June 7, 2020 without good cause attributable to the employer. Ms. Garcia-Vega received the decision on or About July 30, 2020. Ms. Garcia-Vega is a native Spanish speaker and reader. Ms. Garcia-Vega speaks and reads limited English. While the main text of the decision was in English, a substantial portion of the decision was also stated in Spanish. The decision indicated that it would become final unless an appeal was postmarked by August 8, 2020 or received by the Appeals Bureau by that date. On September 3, 2020, Ms. Garcia-Vega faxed an appeal form and four attachments to the Employment Appeal Board. Ms. Garcia-Vega did not sign or date the appeal form. The Employment Appeal Board date-stamped the appeal as received on September 3, 2020 and forwarded the appeal to the Appeals Bureau at Iowa Workforce Development. The Appeals Bureau received the appeal on September 8, 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). One 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence establishes that the appeal was untimely. Ms. Garcia-Vega established through her testimony that she is an unreliable historian on matters pertaining to receipt of the decision filing of the appeal. Though the decision that denied benefits was mailed to Ms. Garcia-Vega on July 29, 2020, Ms. Garcia-Vega initially testified that she received the decision in June 2020. Ms. Garcia-Vega repeated her testimony that she received the decision in June. At other times, Ms. Garcia-Vega stated that she did not know when she received the decision. At another time, Ms. Garcia-Vega made a vague assertion that the decision had been misdirected and delayed before it reached her. Eventually, Ms. Garcia-Vega stated that she had received the decision on July 30, 2020. Ms. Garcia-Vega provided varying testimony regarding the steps she took to respond to the decision. At one point, she stated she spoke to Iowa Workforce Development the same day she received the decision. Ms. Garcia-Vega then testified that she instead had spoken to IWD four days after she received the decision. Ms. Garcia-Vega testified that she had submitted an online appeal, though the appeal was clearly faxed from a Mexican grocery store on September 3, 2020. Ms. Garcia-Vega presented insufficient evidence to establish that she lacked a reasonable opportunity to file a timely appeal or that IWD or the United States Postal Service contributed in any way to the appeal being substantially late. See Iowa Administrative Code rule 871-24.35(2). The evidence fails to establish good cause to treat the late appeal as a timely appeal. Because the evidence establishes an untimely appeal, the administrative law judge lacks jurisdiction to disturb the July 29, 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).

DECISION:

The claimant's appeal was untimely. The July 29, 2020, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on June 7, 2020 without good cause attributable to the employer, remains in effect.



James E. Timberland
Administrative Law Judge

November 13, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**