

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY N KUYOCH
Claimant

APPEAL NO. 21A-UI-08761-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

**OC: 01/10/21
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, Mary Kuyoch, filed a late appeal from the March 2, 2021, 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 the claimant voluntarily quit on December 24, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 11, 2021. Ms. Kuyoch participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the March 2, 2021, reference 01, decision.

The administrative law judge attempted, shortly before 3:00 p.m. and at 3:20 p.m., to secure a Nuer-English interpreter from CTS Language Link to assist with a hearing. CTS Language Link was unable to secure an Nuer-English interpreter. The claimant advised that she had been in the United States since 1994 and had been learning English since 1997. The claimant was able to converse in English with alternative phrasing of questions as necessary. At the claimant's request, the hearing proceeded as scheduled.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely. Whether the claimant voluntarily quit her Aerotek employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed by Aerotek and worked in a full-time, first-shift assignment from May 2020 until December 24, 2020, when she voluntarily quit. The claimant quit because her teenage children were skipping school and the claimant wanted to be available during school hours to ensure her children attended school.

On March 2, 2021, Iowa Workforce Development mailed the March 2, 2021, reference 01, decision to the claimant's Urbandale last-known address of record. The decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on December 24, 2020 without good cause attributable to the employer. The decision stated that the decision would be final unless an appeal was postmarked by March 12, 2021 or was received by the Appeal Section by that date. The claimant received the decision in a timely manner, prior to the deadline for appeal.

The claimant received the reference 01 decision on March 10, 2020. The claimant is a native Nuer speaker and speaks English as a second language. The claimant been in the United States since 1994 and has been learning English since 1997. The claimant resides with her two American-born, English-speaking teenage children, ages 14 and 15. The claimant moved to the Des Moines area in 2019 and has a very limited network of friends and acquaintances. The claimant is not computer literate. The claimant enlisted the assistance of a neighbor, Moses Lul, to file an online appeal from the decision. The claimant contacted Mr. Lul when she received the decision. However, it was not until March 29, 2021, that the claimant filed an online appeal with the assistance of Mr. Lul. The Appeals Bureau received the appeal on March 29, 2021.

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). No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence establishes an untimely appeal. In light of the claimant's late receipt of the decision on March 10, 2021 and her reasonable need for assistance in filing an appeal, the two-day window to file an appeal did not provide this claimant with a reasonable opportunity to file an appeal by the March 12, 2021 deadline. The delayed receipt of the decision was attributable to the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). However, not filing the appeal until March 29, 2021, 19 days after receipt of the decision, was unreasonable delay under the circumstances. The claimant had other options besides filing an online appeal. The claimant could have mailed the appeal or could have otherwise submitted the appeal within a reasonable time after receiving it. Because the appeal was untimely, the administrative law judge lacks jurisdiction to change the decision the claimant appealed from. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Even if the claimant's appeal had been timely, the evidenced indicates a December 24, 2020 voluntary quit without good cause attributable to the employer.

Iowa Code section 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(17) and (18) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (17) The claimant left because of lack of child care.
- (18) The claimant left because of a dislike of the shift worked.

Thus, even if the appeal had been timely, the claimant's voluntary quit due to the need to ensure her teenagers went to school and associated need to no longer work first shift hours was a voluntary quit without good cause attributable to the employer.

DECISION:

The claimant's appeal from the March 2, 2021, reference 01, decision was untimely. The decision that disqualified the claimant for benefits, and that held the employer's account would not be charged, remains in effect.



James E. Timberland
Administrative Law Judge

June 25, 2021
Decision Dated and Mailed

jet/lj