

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MAHAYLA M CLAISER
Claimant

HY-VEE INC
Employer

APPEAL NO. 22A-UI-13779-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/01/22
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On June 9, 2022, Mahayla Claiser (claimant) filed a late appeal from the May 24, 2022 (reference 01) decision that allowed benefits for the period of May 1, 2022 through June 4, 2022, provided the claimant was otherwise eligible, but that disqualified the claimant for benefits effective June 5, 2022. The deputy concluded the claimant voluntarily quit without good cause attributable to the employer effective June 4, 2022 and that the employer had terminated the employment in response to the claimant's quit notice on May 4, 2022. After due notice was issued, a hearing commenced on July 25, 2022 and concluded on August 11, 2022. The hearing was rescheduled from July 25, 2022 to August 11, 2022 due to the claimant's assertion of insufficient notice of the hearing. The claimant participated. Barbara Buss of Corporate Cost Control represented the employer and presented testimony through Lacy Rumsey, Shaylon Cobrock, and Matt Moegle. Exhibit A, the online appeal, and Employer exhibits labeled E1 through E11 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01 decision and DBRO. The administrative law judge took official notice of the reference 01 fact-finding materials for the limited purpose of documenting the claimant's interaction with the Benefits Bureau deputy at the time of the fact-finding interview.

ISSUES:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.
Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.
Whether the employer terminated the employment response to the claimant giving notice of her resignation.

FINDINGS OF FACT:

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

Mahayla Claiser (claimant) established an original claim for benefits that was Iowa Workforce Development deemed effective May 1, 2022. On May 20, 2022, an Iowa Workforce

Development Benefits Bureau deputy held a telephonic fact-finding interview that addressed the claimant's separation from Hy-Vee. The claimant participated in the fact-finding interview. The deputy would have told the claimant to expect an decision in mail in the subsequent days.

On May 24, 2022, Iowa Workforce Development mailed the May 24, 2022 (reference 01) decision to the claimant's Grimes, Iowa last-known address of record. The reference 01 decision was delivered to the claimant's Grimes address of record in a timely manner, prior to the deadline for appeal.

The reference 01 decision allowed benefits for the period of May 1, 2022 through June 4, 2022, provided the claimant was otherwise eligible, but disqualified the claimant for benefits effective June 5, 2022. The deputy concluded the claimant voluntarily quit without good cause attributable to the employer effective June 4, 2022 and that the employer had terminated the employment in response to the resignation notice the claimant provided on May 4, 2022. The specific language of the reference 01 decision was as follows:

IF THIS DECISION DENIES BENEFITS AND IS NOT REVERSED ON APPEAL, IT MAY RESULT IN AN OVERPAYMENT WHICH YOU WILL BE REQUIRED TO REPAY.

DECISION:

YOU ARE ELIGIBLE TO RECEIVE UNEMPLOYMENT BENEFITS FROM THE DATE OF YOUR TERMINATION UNTIL THE DATE OF YOUR RESIGNATION, IF YOU MEET ALL THE OTHER ELIGIBILITY REQUIREMENTS.

EXPLANATION OF DECISION:

OUR RECORDS INDICATE YOU RESIGNED EFFECTIVE 06/04/22. BECAUSE OF YOUR RESIGNATION, YOUR EMPLOYER TERMINATED YOUR EMPLOYMENT ON 05/04/22. YOUR RESIGNATION WAS NOT CAUSED BY YOUR EMPLOYER. YOU ARE ELIGIBLE TO RECEIVE BENEFITS FROM 05/01/22 UNTIL 06/04/22.

TO BECOME ELIGIBLE FOR BENEFITS, YOU MUST:

EARN WAGES FOR INSURED WORK EQUAL TO TEN (10) TIMES YOUR WEEKLY UNEMPLOYMENT BENEFIT AMOUNT AFTER YOUR SEPARATION DATE; AND MEET ALL THE OTHER ELIGIBILITY REQUIREMENTS.

LEGAL REFERENCE:

THIS DISQUALIFICATION WAS MADE UNDER LAW SECTION 96.5-1 AND IAC 24.25(38). A COPY IS AVAILABLE AT ANY WORKFORCE DEVELOPMENT CENTER.

TO APPEAL THIS DECISION:

THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 06/03/22, OR RECEIVED BY IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE. ...

QUESTIONS:

IF YOU HAVE QUESTIONS PLEASE CALL CUSTOMER SERVICE AT 866-239-0843.

The claimant's address of record was and is an apartment the claimant shares with one or more people. The claimant's name has at all relevant times been on the apartment lease. The apartment came with use of a locked mailbox. The property owner or property manager provided one mailbox key to be shared by the occupants of the apartment. The property owner or property manager presumably retained a second key to the locked mailbox. The mailbox key

usually hangs on the refrigerator in the apartment. The claimant's living arrangements include domestic discord. At the time the reference 01 decision was delivered to the locked mailbox in a timely manner, the claimant was temporarily residing with her aunt, away from the address of record.

The claimant collected the reference 01 decision from the mailbox on May 31 or June 1, 2022, prior to the deadline for appeal. The claimant asserts the mailbox key she shared with her roommate(s) was not available to her prior to the day the claimant collected the reference 01 decision from the locked mailbox. The claimant did not immediately open the IWD correspondence. Instead, the claimant waited until June 4 or 5, 2022 to open and review the correspondence. By that time, the June 3, 2022 deadline for appeal had passed. Though the reference 01 decision included clear and concise instructions for filing an appeal online, by fax or by mail, and also included an email address to which an appeal could be directed, the claimant delayed filing the appeal to June 9, 2022. On the afternoon of June 9, 2022, the claimant completed and transmitted an appeal from the reference 01 decision. The Appeals Bureau received the decision on June 9, 2022. The claimant asserts she delayed filing the appeal because she found the language of the decision confusing and did not immediately discern that the decision included a disqualification for benefits.

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 in the record establishes an untimely appeal from the May 24, 2022 (reference 01) decision. The claimant participated in the May 20, 2022 fact-finding interview and at that time would have been told to expect a decision in the mail in the days that followed. The reference 01 decision was mailed to and delivered to the claimant's last-known address in a timely manner. There is no reason to conclude the United States Postal Service took more than two or three days from the mailing date to deliver the correspondence to the claimant's Grimes address of record. Though the claimant was residing away from her apartment at the time the reference 01 decision was delivered to her mailbox, the weight of the evidence indicates that did not prevent the claimant from accessing the mailbox through her roommate or through the property owner/manager. When the claimant collected the reference 01 decision from the mailbox on May 31 or June 1, 2022, the claimant still had two to three days in which to file an appeal by the June 3, 2022 appeal deadline, which means the claimant still had a reasonable opportunity to file a timely appeal. The claimant unreasonably denied herself the opportunity to file a timely appeal by choosing to delay opening and reviewing the correspondence until June 4 or 5, 2022, after the appeal deadline has passed. The claimant then engaged in further unreasonable delay by waiting to June 9, 2022 to file an appeal. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or to delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). The text of the reference 01 decision indicates, with sufficient clarity for a reasonable to understand, that the decision allowed benefits only for the specific period of May 1 through June 4, 2022 and disqualified the claimant for benefits thereafter. Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the 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 from the May 24, 2022 (reference 01) decision was untimely. The reference 01 decision remains in effect.

In the event this decision regarding timeliness of appeal is reversed upon further appeal, there is sufficient evidence in the record for a decision on the merits regarding the substantive issues without need for further hearing.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

__September 27, 2022__
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.