

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER C HANSEN

Claimant

GOOD SHEPHERD GERIATRIC CNTR INC

Employer

APPEAL 18A-UI-09119-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/29/18

Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Jennifer Hansen, Claimant, filed an appeal from the August 17, 2018, (reference 01) unemployment insurance decision that denied benefits because she voluntarily quit work with Good Shepherd Geriatric Center, Inc. by failing to report to work for three days in a row without notifying her employer. The parties were properly notified of the hearing. A telephone hearing was held on September 20, 2018 at 9:00 a.m. Claimant participated. Employer participated through Lauren Louvar, Human Resources Manager, and Jean Palmer, Director of Assisted Living. Corey Jones was a witness for claimant. No exhibits were admitted.

ISSUE:

Whether claimant's appeal was filed timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on August 17, 2018. Claimant does not recall when she received the decision in the mail; however, claimant usually receives mail from Des Moines, Iowa in 1-2 days and has no reason to believe that this decision was not received in 1-2 days. (Claimant Testimony) The decision states: "This decision becomes final unless an appeal is postmarked by 08/27/18, or received by Iowa Workforce Development Appeal Section by that date." Claimant appealed the decision online on August 30, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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. (emphasis added)

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date the 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 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.

Claimant's delay was caused by her confusion; claimant believed a fact-finding interview scheduled for August 26, 2018 on the issue of claimant's ability and availability was the appeal hearing on this issue of her separation. (Claimant Testimony) The administrative law judge concludes that failure to file a timely appeal was not due to any agency error or misinformation or delay of the United States Postal Service. The administrative law judge further concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The August 17, 2018, (reference 01) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs