

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICA CAVIN**  
Claimant

**APPEAL NO: 12A-UI-12464-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 06/17/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Mica Cavin (claimant) appealed an unemployment insurance decision dated September 17, 2012, reference 04, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Casey's Marketing Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2012. The claimant participated in the hearing. The employer participated through Peggy Lettington, Area Supervisor. Exhibit D-1 was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's appeal is timely.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on September 17, 2012. The claimant initially testified that she received the decision and that she received the decision shortly after it was mailed. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 27, 2012. The appeal was not filed until October 8, 2012, which is after the date noticed on the disqualification decision. The claimant subsequently testified that she only had the September 26, 2012 decision in front of her and was not aware of a September 17, 2012 decision. She did admit she had received other decisions.

The claimant was hired on November 2, 2011 as a part-time donut maker. She went full time and became the second assistant manager in 2012. The claimant's last day of work was June 10, 2012 and she could not work after that date due to a non-work-related medical condition. She had carpal tunnel surgery on her right hand on June 13, 2012 and the employer granted her a six-week personal leave of absence.

The only medical documentation the employer received regarding the claimant was from Iowa Ortho and it was dated June 27, 2012. The claimant was placed on restrictions but was going to be re-evaluated on July 25, 2012. She was evidently released without restrictions on July 25, 2012 and the claimant talked to the employer on that date but never provided a work release. She told the employer that she was going to have surgery on her left hand on August 8, 2012 and would need to be off work after that surgery. She did not qualify for leave under the Family Medical Leave Act and the employer could not offer her any more personal leave.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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, subsection 10, 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 calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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 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.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In the alternative, if the claimant had established a legal excuse for filing a late appeal, the evidence establishes her separation was without good cause attributable to the employer. She went on a personal leave of absence for non-work-related medical reasons and did not return to work after that leave. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). The claimant never provided the employer with a complete work release on July 25, 2012 so the employer could not place her back on the schedule.

However, the claimant had also told the employer she was going to have an additional surgery on August 8, 2012 which meant she would not be able to work after that for an additional six weeks. If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The evidence in the record establishes that the claimant did, in fact, fail to return to the employment at the end of the leave of absence. Accordingly, the separation from the employment is deemed a voluntary quit and claimant is disqualified for benefits.

**DECISION:**

The unemployment insurance decision dated September 17, 2012, reference 04, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are denied.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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