

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIMMIE L PARKER**  
Claimant

**APPEAL NO. 09A-UI-03238-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 01/11/09**

**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.4-3 – Able and Available  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Jimmie L. Parker (claimant) appealed a representative's February 6, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2009. The claimant participated in the hearing and presented testimony from one other witness, Jackie Sharif. Will Sager appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered 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.

**ISSUES:**

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

Did the claimant voluntarily quit for a good cause attributable to the employer?

Is the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last known address of record on February 6, 2009. The claimant received the decision on or by February 10. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 16, 2009. The appeal was not filed until it was faxed on March 1, 2009, which is after the date noticed on the disqualification decision. The claimant believed he had attempted to fax the appeal earlier, but did not have any verification of an earlier fax transmission. He believed the earlier transmission had been approximately February 20.

The claimant started working for the employer on November 28, 2007. He worked full time as a production worker on the second shift in the employer's Storm Lake, Iowa pork processing facility. His last day of work was December 2, 2008. He voluntarily quit as of that date. His reason for quitting was to move back to Chicago to stay with his mother and provide care for her, as she is suffering from pulmonary heart disease. He is still providing care for her and is not presently in a position where he could return to work.

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

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. 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 prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

However, in the alternative, even if the appeal were to be deemed timely, the administrative law judge would deem the representative's decision substantially correct. If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. In general, leaving employment due to serious family needs or obligations are good personal reasons for quitting, but not reasons that would be attributable to the employer so as to qualify the former employee for unemployment insurance benefits. 871 IAC 24.25(20), (23). Further, with respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. The claimant is not presently able and available for work on the same basis in which his wage credits were earned. 871 IAC 24.22(2).

**DECISION:**

The representative's February 6, 2009 decision (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Even if it were treated as timely, the decision is substantially correct. Benefits are denied.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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