

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DEVON M HALL**  
Claimant

**CITY OF IOWA CITY**  
Employer

**APPEAL NO. 21A-UI-15910-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the August 26, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 10, 2021. The claimant did participate. The employer did participate through Brad Barker. All parties agreed to waive time and notice and add the issue of job separation to those being determined by the ALJ.

**ISSUES:**

Whether the appeal is timely?

Whether claimant is able and available for work?

Did claimant voluntarily quit with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on August 26, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 5, 2020. The appeal was not filed until July 19, 2021, which is after the date noticed on the disqualification decision. Claimant stated he did not know if he would have received the appeal sent over a year ago.

Claimant last worked for employer at the end of March 2019. Claimant quit his part time job with employer such that he could move to Sioux City to work a full time job with Hall Law Firm. The law firm laid claimant off from work for a two-week period in March and April of 2020, and claimant filed for benefits as a result of this layoff.

At all times relevant, claimant remained able and available for work.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 not 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 potentially due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains 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).

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

At all times relevant to claimant's filing for unemployment, he remained able and available for work.

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.

Iowa Code section 96.5(1)a 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. But the individual shall not be disqualified if the department finds that:

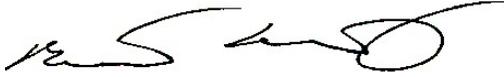
a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge holds that the evidence has established that claimant voluntarily quit such that he could take employment with a different employer. Claimant did take that employment and was working for that employer at the time of claimant's filing for unemployment.

Claimant is eligible to receive unemployment benefits for the two weeks ending April 4, 2021. Employer's account shall not be charged for benefits received by claimant.

**DECISION:**

The decision of the representative dated August 26, 2020, reference 01, is reversed. The appeal is deemed as timely filed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible. Employer's account shall not be charged for benefits received by claimant.



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Blair A. Bennett  
Administrative Law Judge

September 15, 2021  
Decision Dated and Mailed

bab/kmj