

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CRAIG A RARDIN  
1033 – 5<sup>TH</sup> AVE SE  
CEDAR RAPIDS IA 52403

TEAM STAFFING SOLUTIONS INC  
116 HARRISON ST  
MUSCATINE IA 52761

Appeal Number: 04A-UI-09441-DT  
OC: 05/25/03 R: 03  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving  
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Craig A. Rardin (claimant) appealed a representative's March 31, 2004 decision (reference 05) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Team Staffing Solutions, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 16, 2004. This appeal was consolidated for hearing with four related appeals, 04A-UI-09445-DT, 04A-UI-09443-DT, 04A-UI-09440-DT, and 04A-UI-09444-DT. The claimant participated in the hearing. Wendy Clang 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.

#### FINDINGS OF FACT:

The claimant established an unemployment insurance benefit year effective May 25, 2004. The representative's decision was mailed to the claimant's last known address of record on March 31, 2004. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 10, 2004. The appeal was not filed until September 1, 2004, which is after the date noticed on the disqualification decision. The claimant filed his appeal when he became aware of the decision upon establishing a second claim year effective August 15, 2004.

The employer is a temporary employment firm. The claimant began an open-ended, as-needed assignment with the employer's business client on November 14, 2003. He worked regularly on the assignment through December 30, 2003. The claimant was to return to the assignment on January 2, 2004; however, the claimant was in jail from January 1 through February 12, 2004 and, therefore, unable to return to the assignment. The employer then considered the claimant's assignment closed.

When the claimant was released from jail on February 12, he recontacted the employer, and the employer reopened the assignment to the claimant effective February 17. He worked on the assignment for one week beginning February 23. He was not needed for a number of weeks thereafter, but on March 19, he was to report back to the assignment, but he was again in jail, having been incarcerated on March 8, so the employer again closed the claimant's assignment. He was released from jail on May 6 and contacted the employer, who again reopened the assignment May 11. He worked one day in May, two days in June, and one day in July. His regular hours on the assignment were not available to him upon his return because, after his assignment was closed in January due to his being in jail, the employer placed other employees into the claimant's prior position. The assignment was finally closed on July 7 by the business client determining that the overall arrangement with the employer to have been completed.

#### REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision.

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 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 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 due to Agency error or misinformation or delay or other action of the United States Postal Service, pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed, pursuant to Iowa Code Section 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The substantive issue in this case is whether the claimant voluntarily quit and, if so, whether it was for good cause attributable to the employer.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

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.

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. However, an employee is also deemed to have left without good cause if the employee is absent from work due to becoming incarcerated. 871 IAC 24.25(16). Benefits are denied.

#### DECISION:

The representative's March 31, 2004 decision (reference 05) is affirmed. The claimant's appeal is treated as timely. The claimant is deemed to have voluntarily left his employment without good cause attributable to the employer. As of January 1, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/tjc