IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

ALISON L BROKAW Claimant **FAMILY RESOURCES INC** Employer	**APPEAL NO. 21A-UI-23575-B2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/29/21** **Claimant: Respondent (1)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from the October 11, 2021, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 14, 2021. The claimant did participate and had witnesses Annika O'Melia and Zachary Nielsen. The employer did participate through Mindy Lawler. Claimant and employer agreed to waive time and notice and allow the administrative law judge to address the issues of whether claimant was overpaid benefits and whether employer's account should be held to charge if claimant was found to be overpaid benefits.

ISSUES:

Whether the appeal is timely?
Did claimant voluntarily quit with good cause attributable to employer?
Whether claimant was overpaid benefits?
If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the employer's last known address of record on October 11, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 21, 2021. The appeal was not filed until October 22, 2021, which is after the date noticed on the disqualification decision. Employer's witness stated she did receive the decision, but that receipt of decision (on some unknown date) didn't allow employer sufficient time to gather together documents and create the appeal in a timely manner. Employer stated she did not know when the unemployment decision granting benefits was received. Employer also did not know how many days employer took to gather together the information sent in with the appeal.

Claimant requested a sealing of records in this matter after the hearing had taken place and after claimant chose to have her therapist testify at the hearing. Claimant provided no authority in support of this request. The request is denied.

Claimant worked for employer as a domestic abuse supervisor for the state of Iowa. During Covid, claimant and all other workers were working remotely. While claimant was working remotely, she filled out and filed documents with employer requesting that she be allowed to work from her family's home is Missouri under the ADA. Employer granted the request and then granted additional requests to extend this work from home policy as claimant's medical provider renewed the requests for accommodation. Claimant still had to be in the area one week out of the month to work in an on-call basis for emergency situations. She did this.

In June of 2021 employer alerted all employees that they would be returning to the office to work fifty percent of the time. Claimant tried to not return to the office and submitted paperwork requesting the extension of the accommodation under the ADA. Employer chose not to accept the requests and denied the accommodation. Employer stated that there was no change in circumstances leading to the denial other than employer's desire to have all people return to the office.

At or around the time claimant was attempting to extend her accommodation, claimant brought forth allegations to authorities of alleged improprieties occurring with employer. Employer believed claimant did not go through correct channels and issued claimant a Record of Conversation which stated, among other things, that claimant could be terminated if she were to repeat said actions. A few days after this Record of Conversation, (which employer stated was not a written warning of any type) employer chose to deny claimant's request to have the accommodation extended.

On July 27, 2021, claimant submitted a letter of resignation. She resigned her employment on September 1, 2021.

Claimant has received unemployment benefits in this matter of $6,903.00.

Employer did not substantially participate in fact finding as no one was available to field the fact finding call.

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 have a reasonable opportunity to file a timely appeal.

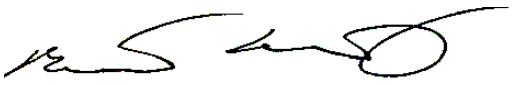
The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 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).

As employer did not file a timely appeal in the matter, the ALJ does not need to address the separation issues.

This issues of overpayment of benefits and employer participation in fact finding are moot as claimant is allowed benefits.

DECISION:

The October 11, 2021, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Blair A. Bennett
Administrative Law Judge

January 19, 2022
Decision Dated and Mailed

bab/scn