

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DESHAWN PRIEST
Claimant

BLACKHAWK SERVICES CORP
Employer

APPEAL NO. 21A-UI-06170-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/06/20
Claimant: Respondent (1)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding
871 IAC r. 24.28(6) – Previously Adjudicated Issue

STATEMENT OF THE CASE:

Employer filed an appeal from the February 9, 2021, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 5, 2021. The employer did participate through hearing representative Amber Meadows and witness Jacob Quinn. Employer's exhibits 1-3 were admitted to the record. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether the appeal is timely?

Whether claimant was discharged for misconduct?

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?

Is the claimant eligible for FPUC or LWAP benefits?

Was the issue previously adjudicated in this matter?

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 February 9, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 19, 2021. The appeal was not filed until February 24, 2021, which is after the date

noticed on the disqualification decision. Employer stated that documents were mailed to employer at the time of the Texas winter storm that took out power for a week. Mail was not delivered from February 15-19. Employer stated she did not receive the document until February 24, 2021 on her desk. She could not speak as to whether it had been received earlier by employer. Claimant filed her appeal the same day she received the decision allowing benefits.

Employer is a successor in interest to Baker's Pride. On October 20, 2020, a decision was entered finding claimant eligible to receive unemployment benefits as between himself and Baker's Pride. Employer was going through changes and did not appeal this decision.

Claimant had a new claim year on December 27, 2020. Employer had changed ownership to Blackhawk Securities Corporation and it was the new owner that appeared on claimant's filing. The new owner objected to claimant's claim, and a decision was entered granting claimant benefits (Ref 01). Employer appealed this decision.

On June 17, 2020 claimant was discovered by employer to be blowing marijuana vape clouds in the production area at work. When employer confronted claimant, he initially denied this, then admitted to doing so. At the time of hire claimant signed for and received an employee handbook detailing, amongst other things, employer's drug free workplace policy. Employer stated that claimant's act of getting high in the building, next to a supervisor's office, was so outrageous that he was terminated for the activity.

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 as mail was not being delivered.

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 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 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 Admin. Code r. 871-24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

In this matter, the evidence has established that the claim was previously adjudicated by decision of October 20, 2020 reference 05. Although this decision was reached against an employer that had subsequently sold the business, the decision is still in effect. The bureau is without authority to rehear this matter as a decision was issued on the merits and the previous decision shall stand. The issue cannot be adjudicated a second time.

DECISION:

The decision of the representative dated February 9, 2021, reference 01, is affirmed. Although the decision was deemed timely filed, the matter was previously adjudicated allowing the claimant benefits. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

May 14, 2021
Decision Dated and Mailed

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