

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEATRIC TOWAH

Claimant

APPEAL NO. 18A-UI-09618-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 07/29/18

Claimant: Appellant (1)

Iowa Code 96.5(2)(a) – Discharge for Misconduct

Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Beatric Towah filed an appeal from the August 30, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Towah was discharged on July 2, 2018 for insubordination in connection with her job. After due notice was issued, a hearing was held on October 3, 2018. Ms. Towah participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-09619-JTT. Krahn-English interpreter Charles Cooper of CTS Language Link assisted with the hearing. Exhibit A was admitted into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the August 30, 2018, reference 01, decision and the August 31, 2018, reference 02, decision.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 30, 2018, Iowa Workforce Development mailed a copy of the August 30, 2018, reference 01, decision to claimant Beatric Towah at her last known address of record. The decision was mailed from Des Moines to Ms. Towah's home in Des Moines. The decision disqualified Ms. Towah for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Towah was discharged on July 2, 2018 for insubordination in connection with her job. The reference 01 decision arrived in Ms. Towah's mail box in a timely manner, most likely within a day or two of the August 30, 2018 mailing date. The decision stated that the decision would become final unless an appeal from the decision was postmarked by September 9, 2018 or received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to

the next working day. September 9, 2018 was a Sunday and the next working date was Monday, September 10, 2018.

On August 31, 2018, Iowa Workforce Development mailed a copy of the August 31, 2018, reference 02, decision to Ms. Towah's address of record. The reference 02 decision held that Ms. Towah was overpaid \$934.00 in unemployment insurance benefits for the two-week period of July 29, 2018 through August 11, 2018, due to the earlier decision that disqualified Ms. Towah for benefits. The reference 02 decision stated that the decision would become final unless an appeal from the decision was postmarked by September 10, 2018 or received by the Appeal Section by that date. The reference 02 decision arrived in Ms. Towah's mail box in a timely manner, most likely within a day or two of its August 31, 2018 mailing date.

Ms. Towah did not take steps to file an appeal from either decision by the September 10, 2018 appeal deadline that applied to each. Ms. Towah is a native Krahn speaker, does not read English, but possesses substantial English speaking and spoken-English comprehension abilities. These skills were on display at the appeal hearing, when Ms. Towah often responded in English to questions put to her in English before the Krahn-English interpreter had an opportunity to interpret the question into Krahn. Though Ms. Towah does not read English, she has access to bilingual family members and friends who do read English. These include her brother. Ms. Towah does not check her mail on a regular basis and cannot say when she collected either decision from her mail box. Both decisions contained instructions for filing an appeal from the decision and contained telephone numbers Ms. Towah could call if she needed assistance in understanding the decisions or in filing an appeal. When Ms. Towah collected the two decisions, she set them aside and did not take further action on either decision until September 17, 2018. On September 17, 2018, Ms. Towah reviewed the decisions with a family member, went to the Des Moines IowaWORKS center, and completed an appeal form with the family member's assistance. Ms. Towah delivered the completed appeal form to the Iowa Workforce Development staff on September 17, 2018. The IowaWORKS center staff erroneously directed the appeal to the Unemployment Insurance Service Center (UISC), which received the appeal on September 17, 2018 and forwarded the appeal to the Appeals Bureau. The Appeals Bureau received the appeal on September 19, 2018 and treated the appeal as both an appeal from the disqualification decision and the overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer

and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

Ms. Towah's appeal from both decisions was filed on September 17, 2018, when she delivered the completed appeal to the Des Moines IowaWORKS staff.

More than ten calendar days elapsed between the mailing date of each decision and the date on which Ms. Towah filed her appeal. Ms. Towah filed her appeal from each decision exactly one week after the appeal deadline. 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 Ms. Towah 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 evidence in the record shows that, despite the language barrier issue, Ms. Towah did have a reasonable opportunity to file a timely appeal from each of the decisions, but failed to do so. Ms. Towah received the decisions in her mailbox in a timely manner. Ms. Towah had access to assistance within her family and from Iowa Workforce Development. Ms. Towah elected to delay action on the matters until September 17, 2018. The delay in filing the appeal was attributable to Ms. Towah's inaction. The delay was not attributable to Iowa Workforce Development or the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not filed in a timely manner pursuant to Iowa Code section 96.6(2), the

administrative law judge lacks jurisdiction to disturb either of the lower decisions. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The August 30, 2018, reference 01, decision is affirmed. The claimant's appeal from the decision was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on July 2, 2018 for insubordination in connection with her job, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn