

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRANDON D SMITH**  
Claimant

**APPEAL 21A-UI-05656-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NETWORK IMAGING SOLUTIONS LLC**  
Employer

**OC: 01/12/20**  
**Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timely Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Network Imaging Solutions, LLC, the employer/appellant filed an appeal from the January 29, 2021, (reference 11) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2021. The employer participated through Ronda Deeg, human resources manager. Mr. Smith did not register for the hearing and did not participate.

**ISSUES:**

Did the employer file its appeal on time?  
Was Mr. Smith laid off, discharged for misconduct or did he voluntarily quit without good cause attributable to the employer?  
Was Mr. Smith overpaid benefits?  
If so, should she repay the benefits?  
Is Mr. Smith able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to the employer at the correct address on January 29, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 8, 2021. The employer appealed the decision online on February 11, 2021 because Ms. Deeg is behind on her paperwork. The appeal was received by Iowa Workforce Development on February 11, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer's appeal was not filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 employer received the decision in the mail and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision is valid. The employer's delay in filing its appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. The employer's appeal was not filed on time, therefore, the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

**DECISION:**

The employer's appeal was not filed on time. The January 29, 2021, (reference 11) unemployment insurance decision is affirmed.



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Daniel Zeno  
Administrative Law Judge  
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May 03, 2021  
Decision Dated and Mailed

dz/ol