

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MELINDA J HAUERSPERGER**  
Claimant

**APPEAL 18A-UI-08362-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**2 FOR U CHILDCARE WEST LLC**  
Employer

**OC: 07/08/18  
Claimant: Respondent (1R)**

Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

2 For U Childcare West, LLC, (employer) filed an appeal from the July 25, 2018, reference 01, unemployment insurance decision that allowed benefits based upon the determination Melinda J. Hauersperger, (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 28, 2018. The claimant participated personally. The employer participated through Director Jessica Hansen. The Claimant's Exhibits A and B were admitted into the record without objection. The Claimant's Exhibit C was not admitted as it was not relevant to the separation. The Department's Exhibits D1 and D2 were admitted into the record.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the employer's last known address of record on July 25, 2018. The employer received the decision within ten days on July 26, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 4, 2018 or the next business day if the due date falls on the weekend, which it did.

The appeal was not filed until Tuesday August 7, 2018, which is after the date noticed on the disqualification decision, because, initially, the employer decided not to appeal the decision. However, on the morning of August 7, the claimant was observed at a gas station with one of the children who attended the employer's facility. The employer assumed the claimant was full-time employed as a nanny and should not be eligible for benefits. The issue of whether the claimant is able to and available for work has not yet been investigated or adjudicated by the Benefits Bureau.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 employer's decision not to file an appeal to the claimant's eligibility due to the separation was a business decision. The employer's 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). As the appeal was not timely filed pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

The new issue raised during the hearing as to whether the claimant is able to work, available for work, and actively and earnestly seeking work is remanded to the Benefits Bureau for an initial investigation and determination.

**DECISION:**

The July 25, 2018, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

**REMAND:**

The new issue raised during the hearing as to whether the claimant is able to work, available for work, and actively and earnestly seeking work is remanded to the Benefits Bureau for an initial investigation and determination.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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