

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNATHON L BRAAKSMA**  
Claimant

**APPEAL NO: 14A-UI-01901-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARKETLINK INC**  
Employer

**OC: 11/24/13  
Claimant: Appellant (1-R)**

Section 96.5-2-a – Discharge  
Section 96.6-2 –Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated December 16, 2013, reference 01, that held he was discharged for misconduct on November 25, 2013, and benefits are denied. A telephone hearing was held on March 11, 2014. The claimant participated. Kim Berg-Olsen, HR Recruitment Manager, and Jordan Lickteig, Call Center Manager, participated for the employer. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether claimant's appeal is timely.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The department mailed the decision to claimant's address of record on December 16, 2013 with an appeal warning deadline date of December 26. Claimant faxed his appeal on February 19, 2014.

Claimant admits he received the decision about January 15, and he did read the back-side appeal instructions. He waited to fax an appeal due to financial considerations rather than mail it sooner.

The claimant was rehired on January 31, 2014, and last worked for the employer as a full time TSR on February 10, 2014. The employer terminated claimant's second period of employment.

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

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 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 claimant failed to file a timely appeal and he offered no good cause for the delay. The excuses he offered for waiting from January 15 to February 19 are not good cause for an appeal delay.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge further concludes the claimant's second employment separation on February 10, 2014 is remanded to claims for department fact finding. Claimant was re-hired on January 31, 2014 and terminated.

**DECISION:**

The department decision dated December 16, 2013, reference 01, is affirmed. The claimant failed to file a timely appeal and the department decision he was discharged for misconduct on November 25, 2013 remains in force and effect. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The February 10, 2014 employment separation is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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