

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAPHETH L GABBY**  
Claimant

**APPEAL NO. 12A-UI-03256-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 01/22/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Japheth L. Gabby filed an appeal from a representative's decision dated March 12, 2012, reference 01, which denied unemployment insurance benefits. After due notice was issued, a hearing was held by telephone on April 16, 2012. Claimant participated. The employer participated by Mr. Aurelano Diaz, Human Resource Manager.

**ISSUE:**

At issue in this matter is whether the appeal filed herein was timely.

**FINDINGS OF FACT:**

The administrative law judge having considered all of the evidence in the record, finds: That a disqualification decision was mailed to the claimant's last-known address of record on March 12, 2012. The claimant received the decision within two to three days. The decision contained a warning that an appeal must be postmarked or received by Appeals Section by March 22, 2012. The appeal was not filed until April 2, 2012, which is after the date noticed on the disqualification decision.

Mr. Gabby received the decision, read it and disagreed with it but did not immediately file an appeal. Later, the claimant's wife threw the adjudicator's decision away while cleaning house. Mr. Gabby did not contact Workforce Development immediately to request a copy of the decision or to request information on how he should proceed. The claimant was later contacted by Workforce Development regarding another matter and at that time informed the agency of his issue at the loss of the previous decision. Workforce Development sent a copy of the appeal form to the claimant to be completed. At one point apparently after the ten-day appeal period had elapsed the claimant tried to contact Iowa Workforce Development by telephone but was routed into a circular recorded menu that did not allow the claimant to speak with a representative.

## **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, subsection 10, 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 administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Agency error or action of the United States Postal Service pursuant to 871 IAC 24.35(2). The claimant had received the decision, took no action to appeal within the ten-day statutory time limit. The claimant did not attempt to inform the agency or request information in filing an appeal within the ten-day statutory limit. Subsequently, the claimant had difficulty in reaching a representative due to a recorded menu program utilized by the agency. The agency, however, personally contacted Mr. Gabby and sent him a copy of an appeal form, however, the appeal time had run before Mr. Gabby had taken any action on his part to file an appeal in this matter.

**DECISION:**

The representative's decision dated March 12, 2012, reference 01, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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