

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEITH M GEDNALSKI
Claimant

APPEAL 18A-UI-08461-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE COUNTY
Employer

**OC: 05/27/18
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 14, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 4, 2018. Claimant participated. Employer participated through Sheriff Joseph Kennedy and human resource administrator Dawn Sherman. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The reference 01 unemployment insurance decision disqualifying claimant from receiving benefits based on his separation from employment was mailed to the claimant's last known address of record on June 14, 2018. Claimant received the decision shortly thereafter, within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 24, 2018. The appeal was not filed until August 9, 2018, which is after the date noticed on the unemployment insurance decision.

On June 28, 2018, a reference 02 unemployment insurance decision was issued finding claimant able to and available for work effective May 27, 2018, and eligible for benefits, "as long as you meet all the other eligibility requirements." On June 28, 2018, a reference 03 decision was also issued to claimant stating that separate decisions on his claim could have caused confusion and reiterating that he had been disqualified from receiving benefits from May 17, 2018, going forward until he requalified by earning ten times his weekly benefit amount.

On July 2, 2018, employer appealed the decision finding claimant able to and available for work. A hearing was held on this issue only on July 23, 2018. The administrative law judge ruled in claimant's favor and affirmed the decision, finding him able to and available for work.

Claimant then began filing weekly continued claims, but received no payment as the disqualification based on his separation from employment was still in place and had not been appealed. Claimant contacted the agency for the first time on August 9, 2018, to ask questions about whether he needed to appeal the reference 01 decision. Claimant was correctly instructed that he needed to appeal the decision in order to receive benefits. Claimant filed an appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

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

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. 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 unemployment insurance 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. Although the claimant asserts that he did not file an appeal within the prescribed deadline because he was confused with conflicting decisions, I do not find that explanation credible as the reference 02 decision finding him eligible based on his availability for work was not issued until *after* the deadline to appeal the reference 01 decision expired. Furthermore, the agency included language in its subsequent decisions stating that in order to receive benefits, claimant must meet all eligibility requirements and that he in fact was disqualified to receive benefits effective May 17, 2018. Claimant did not contact the agency to ask questions until August 9, 2018, and at that time he was given accurate advice.

The administrative law judge concludes that failure to follow the clear written instructions 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). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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).

DECISION:

The June 14, 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.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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