

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TYRA N WEDDINGTON**  
Claimant

**APPEAL NO. 20A-UI-16149-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ATLANTIC BOTTLING CO**  
Employer

**OC: 07/19/20**  
**Claimant: Respondent (1)**

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Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.5(2)(a) - Discharge

**STATEMENT OF THE CASE:**

The employer filed a late appeal from the September 11, 2020, reference 01, decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 24, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on February 1, 2021. The claimant participated. Anne Marie Johnson represented the employer. The administrative law judge took official notice of the September 11, 2020, reference 01, decision and received Exhibit 1 into evidence. The administrative law judge took official notice of the employer address of record reflected in the IWD TN3270 and myiowauui.org databases.

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 11, 2020, Iowa Workforce Development mailed the reference 01 decision to the employer at the employer's Des Moines last-known address of record. The decision arrived at the employer's address of record in a timely manner, prior to the deadline for appeal. The decision allowed benefits to the claimant, provided she met all other eligibility requirements, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 24, 2020 for no disqualifying reason. The decision stated that the decision would become final unless an appeal was postmarked by September 21, 2020 or was received by the Appeal Section by that date. The employer did not file an appeal by the September 21, 2020 appeal deadline. On December 2, 2020, the employer mailed an appeal to the Appeals Bureau. The correspondence was sent by certified mail and is postmarked December 2, 2020. After the employer filed its appeal, the employer discovered the September 11, 2020, reference 01, decision in its scanned records and determined there had been a miscommunication within the employer's human resources

department that led to the decision not be routed in a timely manner to the human resources business partner responsible for filing the appeal.

**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, subsections 10 and 11, 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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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 evidence establishes an untimely appeal. The September 11, 2020, reference 01, decision was received at the employer's address of record in a timely manner, most likely within a day or two of the September 11, 2020 mailing date. The employer had a reasonable opportunity to file an appeal by the September 21, 2020 appeal deadline, but the employer mishandled the decision and did not route it in a timely manner to the person responsible for filing the appeal. Because the delay in filing the appeal was attributable to the employer's internal processes, rather than attributable to IWD or the United States Postal Service, there is no good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the September 11, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The employer's appeal was untimely. The September 11, 2020, reference 01, decision is affirmed. The decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 24, 2020 for no disqualifying reason, remains in effect.



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James E. Timberland  
Administrative Law Judge

February 16, 2021  
Decision Dated and Mailed

jet/scn