

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROSE DORELIN**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 21A-UI-01892-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/11/20**  
**Claimant: Appellant (1)**

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Iowa Code 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 18, 2020, (reference 03) unemployment insurance decision that denied benefits based upon the conclusion the claimant was discharged due to job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 24, 2021. The claimant participated. The employer participated through Human Resources Administrator Lori DiRenzo. Exhibits D-1 and D-2 were admitted into the record.

**ISSUES:**

1. Whether the claimant's appeal is timely? Whether there are reasonable grounds to consider it timely?
2. Whether the claimant engaged in job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Iowa Workforce Development sent a decision denying the claimant benefits on December 18, 2020, reference 03. (Exhibit D-1) The claimant was not home when the decision was sent. She was spending a couple of days with one of her relatives. She did not make separate arrangements for someone to check her mail.

The claimant returned home on December 26, 2020. She saw the decision in the mailbox on that date. The claimant does not speak English, so she did not immediately understand the decision. The claimant called Iowa Workforce Development's Claims Department. An agent in the Claims Department told the claimant she had until December 28, 2020 to file an appeal. The claimant did not submit her appeal until December 31, 2020. (Exhibit D-2) The additional delay was due to the claimant losing the letter and she relied on her son to help her file the appeal.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is not timely and there are not reasonable grounds to consider it as timely. The administrative law judge further concludes he does not have jurisdiction to evaluate the claimant's separation from employment.

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 issued, 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).

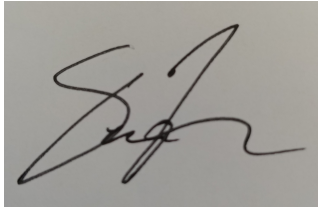
The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The decision was mailed at or around the date of mailing. The claimant's appeal was delayed by the claimant was away from home to visit a relative and did not make arrangements to have someone check her mail. Such a reason is not one that excuses the claimant's ability to file an appeal within the period given on the decision.

The administrative law judge concludes that 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 871 IAC 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The Iowa Workforce Development decision dated December 18, 2020, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Sean M. Nelson  
Administrative Law Judge  
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March 25, 2021  
Decision Dated and Mailed

smn/kmj