

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JONATHAN D DOCK
Claimant

AUTOZONERS LLC
Employer

APPEAL 18A-UI-09753-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/12/18
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/appellant filed an appeal from the September 11, 2018 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 9, 2018. The claimant, Jonathan D. Dock, participated personally. Felisha Robinson participated as a witness for the claimant. The employer, Autozoners LLC, participated through witnesses Pierre Wallace and Boris Dragoyevic. Claimant's Exhibits A through C were admitted.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

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

A decision finding that the claimant was not eligible for unemployment insurance benefits was mailed to the claimant's correct address of record on September 11, 2018. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 21, 2018. The claimant received the decision in the mail on or about Thursday, September 20, 2018. He attempted to use the online Iowa Workforce Development ("IWD") website to file an appeal to the decision but experienced error messages that did not allow him to file an appeal. Claimant again attempted to file an appeal online on the IWD website on Friday, September 21, 2018 but again received error messages.

Claimant contacted the IWD office by telephone on September 21, 2018 and stated that he was receiving error messages when trying to file his online appeal. The IWD employee advised him to try to file every thirty minutes online and to also send an email appealing the decision. The IWD employee advised him that if he were to come in to the office in person and wanted to submit exhibits at that time that he needed to have paper copies available of the information that

he wanted to submit with the appeal. Claimant was never told by the IWD employee that this was the only way to file an appeal.

The decision specifically states that it an appeal must be postmarked by September 21, 2018 in order to be considered a timely appeal. The back of the decision specifically states that “a written appeal may be filed by fax or mail and should include the following information:

- The claimant’s name, address, and Social Security Number
- From the upper right-hand side of the front page of the decision: Original Claim Date, 2-digit reference number (“REF”), and Decision date
- Your reason(s) for the appeal
- Whether you need an interpreter and, if so, your preferred language of communication.”

Claimant chose to continue trying to file the appeal online, rather than sending a letter in the mail, emailing, faxing or hand-delivering an appeal to the Appeals Section by September 21, 2018. The claimant did not have a printed version of the exhibits that he wanted to include with his appeal available in hard copy to attach to the appeal prior to the deadline; however, he could have forwarded those documents to the Appeals Section after filing his initial appeal to the decision. The appeal was filed on September 24, 2018 at 1:56 p.m. by using the online appeal website. The appeal was filed after the due date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant’s appeal is untimely. Because the appeal is untimely, the administrative law judge does not have jurisdiction to review the separation from employment issues.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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 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. 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. 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 Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that there is no jurisdiction to make a determination with respect to the nature of the separation from employment. 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 September 11, 2018 (reference 02) decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs