

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH L RAMIREZ
Claimant

APPEAL NO. 19A-UI-02409-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROTHALL HEALTHCARE INC
Employer

OC: 02/17/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Elizabeth Ramirez filed an appeal from the March 6, 2019, reference 01, decision that held she was disqualified for unemployment insurance benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Ramirez was discharged on February 14, 2019 for excessive unexcused absences. After due notice was issued, a hearing commenced on April 5, 2019 and concluded on April 12, 2019. Ms. Ramirez participated. Bethene Zahner represented the employer. Exhibits 1, 3, 8, 13 and A and Department Exhibit D-1 were received into evidence.

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 March 6, 2019, Iowa Workforce Development mailed the March 6, 2019, reference 01, decision to claimant Elizabeth Ramirez at her last known address of record. The decision held that Ms. Ramirez was disqualified for unemployment insurance benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Ramirez was discharged on February 14, 2019 for excessive unexcused absences. The decision stated that an appeal from the decision must be postmarked or received by the Appeals Section by March 16, 2019. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 16, 2019 was a Saturday. The next working day was Monday, March 18, 2019. The decision contained clear and concise instructions for filing an appeal online, by fax or by mail. Ms. Ramirez received the decision in a timely manner, prior to the deadline for appeal. Ms. Ramirez received the decision on or before March 13, 2019. Ms. Ramirez did not take any steps to appeal from the decision until March 19, 2019. On that day, Ms. Ramirez went to the Davenport IowaWORKS Center, completed an appeal form, and delivered the appeal form to Iowa Workforce Development Staff. The Davenport IowaWORKS staff faxed the appeal to the Appeals Bureau. The Appeals Bureau received the appeal on March 19, 2019.

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).

Ms. Ramirez's appeal was filed on March 19, 2019, when she delivered the completed appeal form to the Davenport IowaWORKS staff.

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). 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 Ms. Ramirez did have a reasonable opportunity to file a timely appeal by the extended March 18, 2019 appeal deadline, but elected to defer action on the matter to March 19, 2019, after the appeal deadline had passed. Ms. Ramirez's failure to file an appeal within the time prescribed by the Iowa Employment Security Law was not due to Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). Accordingly, there is not good cause to treat the late appeal as a timely appeal. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb the March 6, 2019, 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 March 6, 2019, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that held the claimant was disqualified for unemployment insurance benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 14, 2019 for excessive unexcused absences, remains in effect. In the event this decision regarding timeliness of appeal is reversed on further appeal, there is sufficient evidence in the record for entry of a decision on the merits without need for further hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn