

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARL J BENSKIN

Claimant

APPEAL 22A-UI-05271-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC

Employer

OC: 01/09/22

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the February 9, 2022, (reference 02) unemployment insurance decision that allowed benefits based upon the determination that claimant was discharged, but not for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on April 8, 2022. The claimant, Carl J. Benskin, participated personally. The employer, O'Reilly Automotive, Inc., participated through Brandon Ellis. Employer's Exhibits 1 through 9 were admitted. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the employer's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision allowing benefits was mailed to employer's last known address of record on February 9, 2022. Because the employer appealed the decision, it appears that the employer did receive the decision, though it is not clear when. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 19, 2022. The appeal was not faxed to the Appeals Bureau until February 22, 2022, which is after the date noticed on the decision.

The employer's witness could provide no testimony regarding the timeliness issue. The administrative law judge notes that the employer's appeal letter is dated prior to the deadline for appeal. However, the appeal was sent to the Claims Department. There is no indication from testimony or on the appeal letter itself when it was forwarded to the Claims Department. The date stamp on the fax reads "2/22/22," which is after the deadline for appeal.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

Here, the employer has not provided evidence that it submitted or attempted to submit the appeal prior to the deadline to do so. The witness could provide no testimony regarding when

the appeal was submitted. The only evidence regarding when the appeal was submitted are two dates that conflict—the date at the top of the appeal letter itself, and the date on which the appeal was transmitted to the Appeals Bureau. No testimony was provided to clarify this discrepancy. The employer has not demonstrated that the delay in filing the appeal was due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. The employer's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The February 9, 2022, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Alexis D. Rowe
Administrative Law Judge

April 14, 2022
Decision Dated and Mailed

ar/mh