

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTIAN J NORFLEET
Claimant

APPEAL 22A-UI-06797-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 01/16/22
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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:

On March 14, 2022, Casey's Marketing Company (employer/appellant) filed an appeal from the Iowa Workforce Development ("IWD") decision dated March 1, 2022 (reference 07) that allowed unemployment insurance benefits based on a finding that claimant was dismissed on January 16, 2022 without a showing of misconduct.

A telephone hearing was held on April 26, 2022. The parties were properly notified of the hearing. Claimant did not appear or participate. Casey's Marketing Company (employer/respondent) participated by Store Manager Renee Daniels. Official notice was taken of the administrative record.

ISSUE(S):

I. Is the appeal timely?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to employer at the address 1 SE CONVENIENCE BLVD ANKENY IA 50021 on March 1, 2022. That was the correct address for employer at that time.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 11, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. March 11, 2022 was a Friday and not a holiday so the due date was not extended. Employer appealed the decision on March 14, 2022.

Ms. Daniels had no information regarding when the decision was received by employer or what the reason for the delay in appealing was.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal was untimely. The decision dated March 1, 2022 (reference 07) that allowed unemployment insurance benefits based on a finding that claimant was dismissed on January 16, 2022 without a showing of misconduct is therefore final and remains in force.

Iowa Code § 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)(a) 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 on 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)
 - (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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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 appeal was taken after the due date. The administrative record shows the appeal was sent to the correct address. Ms. Daniels had no information regarding when the decision was received by employer or what the reason for the delay in appealing was. Based on this record the administrative law judge cannot find the delay in appealing was due to agency error or misinformation, delay of the United States Postal Service, or some other good cause reason. The administrative law judge therefore concludes the appeal is not timely. Because the appeal is not timely, the decision has become final and the administrative law judge lacks jurisdiction to change it.

DECISION:

The administrative law judge concludes the employer’s appeal was untimely. The decision dated March 1, 2022 (reference 07) that allowed unemployment insurance benefits based on a finding that claimant was dismissed on January 16, 2022 without a showing of misconduct is therefore final and remains in force.



Andrew B. Duffelmeyer
Administrative Law Judge

April 29, 2022
Decision Dated and Mailed

abd/abd