

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

NATASHA A FISCHER

Claimant

APPEAL NO. 22A-UI-17558-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VALUE ADDED DISTRIBUTORS LLC

Employer

OC: 12/19/21

Claimant: Respondent (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

On September 28, 2022, the employer filed a late appeal from the January 5, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on December 6, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on October 25, 2022. Natasha Fischer (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Diana Vinalet represented the employer and presented additional testimony through Mike Kostelnik. Witness Gary Reittinger was available for the hearing, but did not testify. Exhibit 1, 2 and 3 were received into evidence. Exhibit 1 was the September 28, 2022 emailed appeal. Exhibit 2 was the employer's October 13, 2022 email correspondence with the Appeals Bureau, which included a copy of the September 28, 2022 emailed appeal. Exhibit 3 was an employer response, dated January 17, 2022, to a December 21, 2021 Notice of Claim. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the January 5, 2022 (reference 01) decision, the reference 01 fact-finding record, KFFV, the State of Charges mailed on May 9, 2022 and August 9, 2022, and the employer's myiowau.org account information.

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 December 21, 2021, Iowa Workforce Development mailed a notice of claim to the employer's Shawano, Wisconsin last-known address of record. The notice of claim included a January 3, 2022 deadline for the employer's response. Diana Vinalet, Senior Human Resources Consultant, asserts the employer did not receive the notice of claim until January 12, 2022. Ms. Vinalet was not involved in receiving or responding to the notice of claim and her assertion about when the employer received the notice of claim may not be accurate.

Ms. Vinalet asserts that on January 15, 2022, the employer documented a January 12, 2022 receipt of the notice of claim. On January 17, 2022, Nathan Holzinger, Human Resources Consultant, prepared the employer's response to the notice of claim. Mr. Holzinger provided no indication in the response that the notice of claim had been received late, past the January 3, 2022 deadline for response. Ms. Vinalet asserts that on January 17, 2022, Mr. Holzinger faxed the employer's response to the notice of claim to fax number 515-242-0498. The employer is unable to provide a fax confirmation. The number to which the employer asserts Mr. Holzinger faxed the employer response to the notice of claim was not one of the three fax numbers listed on the notice of claim form as numbers to which the response should be directed. Nor is that number associated with the Appeals Bureau. IWD did not receive the alleged response and has not record of such response.

On January 4, 2022, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's December 6, 2021 separation from the employer. IWD mailed notice of the fact-finding interview to the employer's Shawano, Wisconsin last-known address of record on December 23, 2022. The employer did not participate in the fact-finding interview. At the time of the fact-finding interview, the deputy attempted to reach the employer at its telephone number of record. When the employer did not answer, the deputy left a voicemail message that included a statement of the employer's appeal rights from the decision that would follow.

On January 5, 2022, Iowa Workforce Development mailed the January 5, 2022 (reference 01) decision to the employer's Shawano, Wisconsin last-known address of record. The reference 01 decision allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on December 6, 2021 for no disqualifying reason. The reference 01 decision stated the decision would become final unless an appeal was postmarked by January 15, 2022 or was received by the Appeals Section by that date. The reference 01 decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. January 15, 2022 was a Sunday. January 16, 2022 was the Martin Luther King, Jr. legal holiday. The next working day was Tuesday, January 17, 2022.

Though a reasonable person might conclude the IWD correspondence the employer documented on January 15, 2022 as received on January 12, 2022 was most likely the January 5, 2022 (reference 01) decision, rather than the December 21, 2021 notice of claim, the employer asserts it did not receive the January 5, 2022 (reference 01) decision until January 31, 2022. The employer did not respond to the reference 01 decision when the employer received it. The employer did follow up on the matter for several months.

On May 9, 2022, IWD mailed a quarterly Statement of Charges to the employer's last-known address of record. The Statement of Charges included a \$1,106.55 charge to the employer's account for benefits paid to the claimant. The employer did not respond to the Statement of Charges.

On August 9, 2022, IWD mailed an additional Statement of Charges to the employer's last-known address of record. The Statement of Charges included a \$208.67 credit to the employer's account in connection with benefits paid to the claimant.

On or shortly before September 28, 2022, the employer contacted Iowa Workforce Development regarding the August 9, 2022 statement of charges. An IWD representative clarified that the Statement of Charges was about a credit to the employer's account, but added the employer

would continue to be exposed to charges for benefits in connection with the claim unless the employer successfully appealed the January 5, 2022 (reference 01) decision.

On September 28, 2022, Diana Vinalet, Senior Human Resources Consultant, drafted and emailed to the Appeals Bureau an appeal from the January 5, 2022 (reference 01) decision. In the appeal letter, Ms. Vinalet asserts, "We received a notification of benefits paid and charge to account on 08/09/2022. Prior to this we have not received any documentation regarding the status of the claim determination." The assertion about the lack of "any documentation regarding the status of the claim determination" was inaccurate and inconsistent with employer's receipt of the January 5, 2022 (reference 01) decision in January 2022 and inconsistent with the Statement of Charges mailed in May 2022.

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).

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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the January 5, 2022 (reference 01) decision. Though the employer's assertion of January 31, 2022 late receipt of the decision is dubious, even if one accepts that date as the date the employer received the decision, the employer unreasonably delayed filing an appeal to September 28, 2022. The employer presented insufficient evidence to prove the employer actually faxed a response to the notice of claim on January 17, 2022 or that the employer faxed that document to Iowa Workforce Development. There is not good cause to treat the late appeal as a timely appeal. Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the employer appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The employer's appeal from the January 5, 2022 (reference 01) decision was untimely. The decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on December 6, 2021 for no disqualifying reason, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored, slightly textured background.

James E. Timberland
Administrative Law Judge

October 31, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.