

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER T MCDONNELL
Claimant

APPEAL NO: 14A-UI-03402-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 03/24/13
Claimant: Appellant (2)

Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay
Section 96.5-2-a – Discharge
871 IAC 24.32(5) – Probationary Employee

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 10, 2014, reference 06, that held she voluntarily quit without good cause attributable to her employer on January 22, 2014, and benefits are denied. A telephone hearing was held on April 21, 2014. The claimant participated. Robin Nepper, Program Supervisor, participated for the employer. Claimant Exhibit A and Employer Exhibits 1, 2 were received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The department mailed the decision to claimant's address of record on February 10, 2014 with an appeal deadline date of February 20. The claimant submitted a computer generated appeal the next day to UI Appeals. When she later inquired about her appeal she learned it had not been received and she re-submitted a written appeal postmarked on March 27, 2014.

Claimant began a 90-day probationary job with the employer on August 26, 2013 as a full-time family support worker. The employer issued claimant a job change performance improvement (before formal discipline) dated November 27, 2013, and extended her probation to January 27, 2014.

The employer terminated claimant on January 22, 2014 stating it was an at-will employer doing so with or without notice with or without cause. She did not meet the employer expectations during the probationary period.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

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. . . . 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.

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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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. 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 administrative law judge concludes claimant filed a timely appeal. Claimant prepared an immediate appeal that was within the ten-day period required by law. It appears UI Appeals failed to process this appeal, and the claimant has good cause for the appeal delay. When she learned the appeal had not been processed, she was able to re-submit it with proof of the original appeal letter.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The administrative law judge further concludes the employer failed to establish misconduct when it terminated claimant on January 22, 2014.

While the employer is correct that as an at-will employer it may terminate without cause, it must establish misconduct to deny unemployment benefits. While claimant might not have met employer expectations during her probationary employment period, this does not constitute job disqualifying misconduct.

DECISION:

The department decision dated February 10, 2014, reference 06, is reversed. The claimant filed a timely appeal. Claimant was not discharged for misconduct on January 22, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs