

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TRUDY KRAMER**  
Claimant

**APPEAL NO. 19A-UI-09131-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PET MEDICAL CENTER OF AMES**  
Employer

**OC: 07/21/19**  
**Claimant: Respondent (1)**

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Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 95.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a late appeal from the August 14, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 24, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on December 13, 2019. Claimant Trudy Kramer participated. Dr. Donna Rizzo, D.V.M., represented the employer. Exhibits 1 and 2 and Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether there is good cause to treat the employer's late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 14, 2019, Iowa Workforce Development mailed a copy of the August 14, 2019, reference 01, decision to the employer at the employer's last known address of record. The decision allowed benefits to the claimant provided she was otherwise eligible and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 24, 2019 for no disqualifying reason. The decision stated that an appeal from the decision must be postmarked by August 24, 2019 or be received by the Appeal Section by that date. The employer received the decision in a timely manner, prior to the deadline for appeal. The employer estimates she received the decision on or about August 16, 2019. Upon receipt of the decision, the employer elected not to appeal from the decision. The employer did not take any steps to appeal the decision by the appeal deadline. On November 8, 2019, Iowa Workforce Development mailed a Statement of Charges to the employer. The Statement of Charges included charges to the employer's account for benefits paid to the claimant during the calendar quarter that ended September 30, 2019. In response to the quarterly statement of charges, the employer drafted an appeal letter on November 17, 2019. The employer elected to mail the appeal. The employer used her postage meter to place a postage meter mark on the envelope that was dated November 18, 2019 and placed the

correspondence in the mail that same day. The United States Postal Service postmarked the correspondence on November 18, 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).

The employer's appeal was untimely. The employer's appeal was filed on November 18, 2019, which was the postmark date and the postage meter date. More than ten calendar days elapsed between the mailing date and the date this appeal was filed. Indeed, the appeal was filed more than three months after the August 14, 2019 was mailed to the employer. 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 administrative law judge must consider whether the employer/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 the employer/appellant did have a reasonable opportunity to file a timely appeal, based on the employer's receipt of the decision about eight days before the appeal deadline. The late filing of the appeal was due to the employer's decision not file an appeal from the August 14, 2019, reference 01, decision by the appeal deadline. The late filing of the appeal was not attributable to Iowa Workforce Development or the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the August 14, 2019, reference 01, decision has become a final agency decision and the administrative law judge lacks jurisdiction to disturb the 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 August 14, 2019, reference 01, decision is affirmed. The employer's appeal was untimely. The decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on July 24, 2091 for no disqualifying reason remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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