

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROGELIO H LOZANO
Claimant

APPEAL 20A-UI-05371-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PROCESSING INC A COOPERATIVE
Employer

OC: 04/19/20
Claimant: Respondent (1)

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
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On June 8, 2020, the employer filed an appeal from the May 21, 2020, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2020. Claimant participated. Employer participated through Equifax hearing representative Thomas Kuiper. Travis Robinson and Terry Harvey observed. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 21, 2020, Iowa Workforce Development mailed a reference 01 decision to employer's authorized third-party representative, Talx UCM Services a/k/a Equifax. The decision allowed claimant benefits and warned that an appeal was due by May 31, 2020. Equifax is unsure of the date it received the decision. Equifax filed an appeal on behalf of employer on June 8, 2020. The appeal was filed late because Equifax was receiving a high volume of mail due to the COVID 19 pandemic.

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:

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

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 unemployment insurance 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).

The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2).

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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Employer authorized Equifax to act on its behalf in regard to unemployment insurance matters. Equifax presented no evidence of when it received the decision on employer's behalf. Equifax is a sophisticated company and no doubt has a system to track when it receives unemployment insurance decisions. Equifax is the only party that could provide that information for the record. Equifax did not present any evidence that it did not receive the unemployment insurance deadline prior to the appeal deadline of May 31, 2020. Equifax did not file the appeal on employer's behalf until June 8, 2020. While Equifax is, no doubt, receiving an unprecedented amount of mail at this time due to the COVID 19 pandemic, it did not present any evidence of how much its business has increased or why it could not have filed an appeal within the statutory deadline. There is no evidence showing that employer's representative, Equifax, did not have a reasonable opportunity to file the appeal.

The administrative law judge concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The May 21, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision allowing benefits remains in effect.



Christine A. Louis
Administrative Law Judge
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July 16, 2020
Decision Dated and Mailed

cal/sam