

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAIGE M BAXTER
Claimant

NORDSTROM INC
Employer

APPEAL 20A-UI-00297-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/01/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – DM – Discharge for Misconduct
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 26, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 29, 2020, at 11:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant filed a timely appeal.
Whether claimant's separation was a discharge for disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 401 W Vine Street, Mount Pleasant, Iowa on December 26, 2019. That was claimant's correct address on that date. Claimant received the decision within three days of mailing. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 5, 2020. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. January 5, 2020 was a Sunday, so the appeal deadline was extended to Monday, January 6, 2020. Claimant appealed the decision via facsimile on January 9, 2020. Claimant's appeal was received by Iowa Workforce Development on the same date. Claimant's delay in submitting the appeal was due to busyness during the holiday season.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely.

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)(c) 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:

(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.

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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Claimant received the decision six days prior to the due date. Claimant's delay in submitting the appeal was not due to any agency error or misinformation or delay of the United States Postal Service. The administrative law judge concludes that claimant's appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The December 26, 2019 (reference 01) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn