

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA K MILLER
Claimant

APPEAL NO. 19A-UI-03498-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 02/24/19
Claimant: Appellant (1)

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Linda K. Miller, the claimant, filed an appeal from a representative's decision dated March 21, 2019, reference 02, which denied benefits, finding that she had been discharged from Walmart, Inc. on January 4, 2019 under disqualifying conditions. After due notice was issued, a telephone conference hearing was held on May 16, 2019. Claimant participated. The employer participated by Mr. Jeremy Nelson and Ms. Natalie Oteri. Employer's Exhibits 1 through 5 and Department Exhibit 1, the administrative file, were admitted into the hearing record.

ISSUE:

At issue in this matter is whether the appeal filed herein was timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on March 21, 2019. The claimant received the decision within the ten day appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 31, 2019. The appeal was not filed until April 27, 2019, which is after the date noticed on the disqualification decision. Although the decision disqualified Ms. Miller for benefits and identified Walmart, Inc. as the employer, the claimant did not recognize it affected her benefits. Ms. Miller did not call the telephone number provided and the decision to make any inquiries.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 Ms. Miller received the disqualification decision regarding her separation from Walmart, Inc. within the ten day appeal period, but the claimant chose not to file an appeal because she did not disagree with the decision disqualifying her for unemployment insurance benefits from this employer and wanted to claim benefits from a different employer. Ms. Miller later filed an appeal in conjunction with her appeal of an overpayment decision that had been mailed to her at a later date.

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.

The administrative law judge concludes that failure 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 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The representative's unemployment insurance decision dated March 21, 2019, reference 02, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn