

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONRAD B HEILIG

Claimant

APPEAL 20A-UI-08408-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUNDE ENTERPRISES, LLC

Employer

OC: 04/19/20

Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting

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 – Federal Pandemic Unemployment Compensation

Iowa Code § 96.6(2) – Filing – Timely Appeal

Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Employer filed an appeal from the June 25, 2020 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 28, 2020, at 8:00 a.m. Claimant did not participate. Employer participated through Brian Prine, Fleet Manager. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.

Whether claimant was overpaid benefits.

Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

Whether employer filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to employer at the correct address on June 25, 2020. Employer does not know the exact date that the decision was received in the mail. Employer does not check its mail every day; it checks its mail once every three days. Employer opened and read the decision on July 10, 2020. The decision was forwarded to the office manager. Employer investigated the matter. Employer contacted Iowa Workforce Development on July 13, 2020 regarding the appeal. IWD instructed employer to submit its appeal. Employer appealed the decision online on July 16, 2020.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by July 5, 2020. If the date falls on a Saturday,

Sunday, or legal holiday, the appeal period is extended to the next working day. July 5, 2020 was a Sunday. The appeal deadline was extended to Monday, July 6, 2020. Employer's appeal was received by IWD Appeals Bureau on July 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer'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) 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:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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).

Employer does not know when the decision was received in the mail because it does not check its mail every day. Employer waited six days after opening and reading the decision to submit its appeal. This delay was due to employer's internal procedures for investigating and processing unemployment insurance decisions. Claimant has not shown that its delay in

submitting its appeal was due to any agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Employer's appeal was not timely. The June 25, 2020 (reference 02) unemployment insurance decision is affirmed. The administrative law judge has no authority to change the decision of the representative.



Adrienne C. Williamson
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August 31, 2020
Decision Dated and Mailed

acw/scn