

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**WESLEY T YANNA**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 23A-UI-02492-JT-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/11/22**  
**Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)(a) & (d) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On March 8, 2023, Wesley Yanna (claimant) filed a late appeal from the January 31, 2023 (reference 07) unemployment insurance decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on December 20, 2022 for violation of a known company rule. After due notice was issued, a hearing was held on March 24, 2023. Claimant participated. The employer did not comply with the hearing notice instructions to call the toll-free number at the time of the hearing and did not participate. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 07 decision, DBRO, KCCO and KFFV.

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Wesley Yanna (claimant) established an "additional claim" for benefits that was effective January 1, 2023. The claimant made a weekly claim for the week that ended January 7, 2023. Then discontinued weekly claims in connected with commencing a period of incarceration on January 11, 2023 pursuant to a Driving While Barred conviction. The claimant completed his jail sentence on February 18, 2023.

On January 31, 2023, Iowa Workforce Development mailed the January 31, 2023 (reference 07) decision to the claimant's Council Bluffs last-known address of record. The reference 07 decision disqualified the claimant for benefits and held the employer account for Tyson Fresh Meats, Inc. would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on December 20, 2022 for violation of a known company rule. The reference 07 decision stated the decision would become final unless an appeal was postmarked by February 10, 2023 or was received by the Appeals Section by that date. The reference 07 decision included clear and concise instructions for filing an appeal from the decision.

The United States Postal Service delivered the reference 07 to the claimant's address of record in a timely manner, prior to the deadline for appeal. The claimant shares a residence with his girlfriend. The girlfriend continued to reside in the shared residence during the claimant's incarceration. However, the claimant does not authorize his girlfriend to open and review his mail. The claimant did not authorize his girlfriend to open and review his mail during his period of incarceration. The claimant's girlfriend did not visit the claimant while he was in jail and the claimant had no other visitors. However, the claimant spoke with his girlfriend by telephone during the period of incarceration. During a phone call on or about February 7 or 8, 2023, the claimant's girlfriend told the claimant a letter from Iowa Workforce Development to the claimant had been delivered to the residence. The claimant did not have his girlfriend open the correspondence. The unopened correspondence was the January 31, 2023 (reference 07) decision.

The claimant did not file an appeal from the reference 07 decision by the February 10, 2023 deadline that passed during the claimant's period of incarceration.

The claimant did not immediately follow up on the IWD correspondence upon his February 18, 2023 release from custody. About a week after the claimant was released from custody, the claimant asked his girlfriend about the letter from IWD. The conversation in question would have occurred on or about February 25, 2023. At that point, the claimant and his girlfriend could not locate the correspondence.

The claimant had reactivated his unemployment insurance claim during the week of February 19-25, 2023 and thereafter commenced making weekly claims.

On March 8, 2023, the claimant spoke with an IWD representative at the Council Bluffs IowaWORKS Center regarding the status of his unemployment insurance claim. The IWD representative referred to the January 31, 2023 (reference 07) disqualification decision.

On March 8, 2023, the claimant completed and transmitted an online appeal from the reference 07 decision. The Appeals Bureau received the appeal on March 8, 2023.

## **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 evidence in the record establishes 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 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the January 31, 2023 (reference 07) decision. The decision was delivered to the claimant's address of record in a timely manner, prior to the deadline for appeal. Despite the claimant's extended incarceration, he had a reasonable opportunity to file an appeal by the February 10, 2023 appeal deadline. The claimant had not taken reasonable steps to ensure that time-sensitive correspondence delivered to his address of record was reviewed and responded to during the period of incarceration. The claimant's girlfriend brought the IWD correspondence to the claimant's

attention days before the appeal deadline, but the claimant elected not to enlist her assistance in reviewing and responding to the decision. The claimant further delayed action on the matter after his February 18, 2023 release from custody. The claimant waited until a week after his release from custody to ask his girlfriend about the IWD correspondence. When the couple could not locate the correspondence, the claimant delayed following up with IWD about the matter until March 8, 2023. The claimant unreasonably delayed filing the appeal. The delay in filing the appeal was attributable to the claimant. The delay in filing the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. 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 untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the appellant appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal from the January 31, 2023 (reference 07) decision was untimely. The decision that that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on December 20, 2022 for violation of a known company rule, remains in effect.



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James E. Timberland  
Administrative Law Judge

March 27, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.