

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS DELACRUZ
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 20A-UI-00557-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/08/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.6(2) – Filing – Timely Appeal

STATEMENT OF THE CASE:

On January 16, 2020, Thomas Delacruz (claimant) filed an appeal from the December 26, 2019 (reference 01) unemployment insurance decision that found he was not eligible for benefits.

A telephone hearing was held on February 4, 2020. The parties were properly notified of the hearing. The claimant participated personally with the assistance of a Spanish interpreter. Tyson Fresh Meats Inc. (employer) participated by Human Resource Administrative Associate Lori Drenzo.

Claimant's Exhibits 1-6 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to claimant at the above address on December 26, 2019, with one difference: it was mailed to Lares, Iowa rather than Lares, Puerto Rico. Nonetheless, claimant did receive the decision at his correct address in Lares, Puerto Rico.

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. The decision also indicates, in Spanish, that the decision becomes final unless an appeal is postmarked or received within 10 calendar days of the decision date. Claimant does not recall whether he read that information or not.

Claimant does not recall exactly when he received the decision. Claimant does recall that he did not file his appeal until approximately two weeks after receiving the decision. Claimant appealed the decision via mail postmarked January 16, 2020. It took claimant approximately two weeks to appeal the decision because he was busy caring for his wife. Claimant had relocated to Puerto Rico in September or October of 2019 to care for his wife, who was having health problems.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the December 26, 2019 (reference 01) unemployment insurance decision that found claimant is not eligible for benefits is **AFFIRMED**.

I. Is the appeal timely?

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)(a) 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 on 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)

(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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable

opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...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.”

Despite the decision being addressed incorrectly, claimant did receive it. However, he delayed approximately two weeks from when he received it until he filed his appeal. While the administrative law judge understands claimant was busy caring for his wife during this period and is sympathetic to his situation, this does not excuse such a long delay. Furthermore, while claimant is not a native English speaker, the decision clearly indicates in Spanish that it becomes final unless an appeal is postmarked or received within 10 calendar days of the decision date. It appears claimant either did not read or failed to follow that guidance.

The delay in the appeal was due to claimant’s failure to closely read the decision or follow its guidance regarding the appeal deadline, coupled with his choice to delay appealing for approximately two weeks from the date he received the decision. These reasons are not due to agency error or misinformation or delay of the United States Postal Service. Claimant had a reasonable opportunity to assert an appeal in a timely manner but failed to do so.

The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the separation issue.

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 therefore AFFIRMED. The appeal is dismissed.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn

