

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALISHA M WINGER
Claimant

DUBUQUE COUNTY
Employer

APPEAL NO. 21A-UI-05780-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 21, 2020, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2021. The claimant did participate. The employer did participate through Tammy Freiberger.

ISSUES:

Whether the appeal is timely?

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on December 21, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 31, 2020. The appeal was not filed until February 22, 2021, which is after the date noticed on the disqualification decision. Claimant stated that she did receive the decision. She stated that she was dealing with stress in a number of matters. She was confused about the decision sent to her and what she could do to respond. This was discussed with her husband and they decided not to do anything at the time.

Claimant last worked for employer on March 14, 2020. Claimant had been placed on PRN status, with required 8 hour shifts to be performed every other weekend. Claimant was not wanting to potentially bring Covid-19 home to her young children. Employer agreed that claimant could stay away from work. Claimant stayed off work for a number of months until employer requested her back in June. Claimant stated she was having surgery at that time and needed to watch her kids and recover.

Claimant was released by her doctor to return to work without restrictions on August 3, 2020. Claimant explained to employer that she could not come back at that time. Her husband was having upcoming surgery and claimant was pursuing a visit with a neurologist concerning her statements that she was once again having seizures. Employer asked for a date of the neurology visit. Claimant did not provide a date for nearly a month. Employer contacted claimant again on September 10, stating to claimant that her job would be lost if she did not return a call telling of her date with the neurologist. Employer stated that claimant never returned the call. Claimant stated that she called back that day and spoke with the administrator. Claimant stated the administrator called her a few days later and told her she'd been terminated, two days before claimant was to meet with a neurologist.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 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). 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 Iowa

Admin. Code r. 871-24.35(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 December 21, 2020, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Blair A. Bennett
Administrative Law Judge

May 6, 2021
Decision Dated and Mailed

bab/kmj