

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA F FROST
Claimant

**HOPE HAVEN AREA DEVELOPMENT
CENTE**
Employer

APPEAL 21A-UI-07163-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Cynthia F Frost, the claimant/appellant, filed an appeal from the January 12, 2021, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 19, 2021. Ms. Frost participated and testified. The employer participated through Cheryl Wright and Deenann Fields.

ISSUES:

Is Ms. Frost's appeal filed on time?

Was Ms. Frost laid off, discharged for disqualifying job-related misconduct or did she voluntarily quit?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Frost at the correct address on January 12, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by January 22, 2021. Ms. Frost received the decision on, or about, January 14, 2021. Ms. Frost disregarded the decision because she believed that since Iowa Workforce Development did not notify her of the fact-finding interview and she had never filed a weekly claim, the decision was "null and void and not a factor."

Ms. Frost filed an additional claim effective January 24, 2021 related to a different employer. When Ms. Frost called Iowa Workforce Development about her additional claim, the representative told Ms. Frost that her account was locked based on the January 12, 2021 decision and that she could appeal that decision. Ms. Frost filed an appeal via email on March 10, 2021. The appeal was received by Iowa Workforce Development on March 10, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Frost's appeal was not filed on time.

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).

Ms. Frost received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Frost's delay in filing her appeal was due to her mistaken belief that the decision was null and void since Iowa Workforce Development did not notify her of the fact-finding interview and she had never filed a weekly claim. This is not good cause. Ms. Frost's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No good cause reason has been established for the delay. Ms. Frost's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Ms. Frost's appeal was not filed on time. The January 12, 2021, (reference 02) unemployment insurance decision is affirmed.



Daniel Zeno
Administrative Law Judge
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May 27, 2021
Decision Dated and Mailed

dz/ol