

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

ALDO VILLA
Claimant

APPEAL NO. 19A-UI-04592-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

OC: 05/05/19
Claimant: Appellant (1)

Iowa Code Section 95.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Aldo Villa filed an appeal from the May 24, 2019, reference 01, decision that disqualified him for unemployment insurance benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Villa was discharged on March 7, 2019 for misconduct in connection with the employment. Mr. Villa requested an in-person hearing. After due notice was issued, an in-person hearing was held in Des Moines on July 9, 2019. Mr. Villa participated. Shelli Seibert represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUES:

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: On May 24, 2019, Iowa Workforce Development mailed the May 24, 2019, reference 01, decision to claimant Aldo Villa at his last known address of record. The decision disqualified Mr. Villa for unemployment insurance benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Villa was discharged on March 7, 2019 for misconduct in connection with the employment. The decision stated that an appeal from the decision must be postmarked by June 3, 2019 or be received by the Appeal Section by that date. The decision was delivered to Mr. Villa's mailbox on Saturday, May 25, 2019. On May 26 or 27, 2019, Mr. Villa collected the decision from his mailbox and read just far enough into the decision to read that the decision disqualified him for benefits. Mr. Villa's first language is Spanish. Mr. Villa is able to read Spanish and English. Most of the text on the front of the decision was in English. The bottom of the front of the decision contained important information in Spanish. The front of the decision provided, in English and Spanish, information for the customer service telephone number Mr. Villa could call if he had questions about the decision or needed assistance with filing an appeal. The back side of the decision contained, in English and in Spanish, information regarding the appeal deadline and the instructions for appeal. Mr. Villa deferred action on the matter and did not file an appeal by the June 3, 2019 appeal

deadline. On June 6, 2019, Mr. Villa went to the Marshalltown Workforce Development Center and completed an online appeal with assistance from another person. The Appeals Bureau received the appeal on June 6, 2019.

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). 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 Mr. Villa had a reasonable opportunity to file a timely appeal. At the time the decision landed in Mr. Villa's mailbox on May 25, 2019, he had nine days in which to file an appeal by the June 3, 2019 deadline. Mr. Villa elected to wait until June 6, 2019 to file his appeal. If Mr. Villa needed assistance in understanding the decision or in filing an appeal, Iowa Workforce Development had both English speaking and Spanish speaking staff available to assist him by telephone. Mr. Villa's assertion that there was no one available to assist him at the Marshalltown Workforce Development Center prior to June 6, 2019 was not credible. The administrative law judge notes that the Marshalltown Workforce Development Center is staffed by multiple staff who are Spanish-English bilingual. Those staff members would have been available to assist Mr. Villa during regular business hours.

Mr. Villa's failure to file an appeal by the June 3, 2019, was attributable to Mr. Villa's delayed action and was not attributable to Iowa Workforce Development or the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. Because the appeal was untimely, the administrative law judge lacks legal authority to disturb the May 24, 2019, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The May 24, 2019, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified Mr. Villa for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 7, 2019 for misconduct in connection with the employment, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs