

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CATHERINE M KAHLER
Claimant

APPEAL NO. 22A-UI-00336-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREER SYSTEMS DEVELOPMENT CORP
Employer

**OC: 10/10/21
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 November 19, 2021, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 25, 2022. The claimant did participate. The employer did participate through hearing representative Dennis Mullens and witnesses Lindsey Cale and Lauren Ammenhauser. Employer's exhibits 1-6 and claimant's exhibit A were admitted to the record.

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 November 19, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 29, 2021. The appeal was not filed until November 30, 2021, which is after the date noticed on the disqualification decision. Claimant stated that she was away for the Thanksgiving holiday, visiting her new grandchild. She stayed until Tuesday, November 30, 2021 and filed her appeal on that day when she returned.

Claimant worked as a full time CTT instructor for employer. For the October session, claimant had three people in her class. One of them was a student who had attitude issues previously, and was well known to administrators. Claimant and the student argued from the first day in class, with the arguments becoming loud enough that they were heard in the next classroom. Claimant didn't know how to properly deal with a student that was incredibly disrespectful and reached out for help. Little guidance was provided by employer.

Claimant told the student on the second day to 'shut up'. Employer heard this, and claimant admitted to saying it. This happened on the second day claimant was in class with the student. During this time, claimant also tried to get a security officer into the room, and that request was

denied by claimant's manager, who sent the officer away as he walked down the hall. Claimant continued to have loud arguments with the student the next day, and was sent home during the third day for not appropriately dealing with the student.

Employer's standards indicate that students are to be dealt with respectfully, and the student did not believe he was being dealt with respectfully. Employer did not believe claimant dealt with the student respectfully, and claimant was not willing to adjust her lesson plans to accommodate the learning styles of the student.

Employer's write up of claimant indicated that claimant would 'roll her eyes' when the manager spoke to her, while the difficult student would act respectfully.

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. Claimant's reason for not filing a timely appeal was that she was on vacation during the period that an appeal could have been timely filed, and she addressed the matter upon return – one day late.

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). Iowa law does not have exceptions to the timeliness for being on vacation when an appeal is due. 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 November 19, 2021, reference 01, 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

February 14, 2022
Decision Dated and Mailed

bab/mh