

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY A NIE
Claimant

APPEAL NO: 12A-UI-00084-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORKERY INDUSTRIES INC
Employer

OC: 11/27/11
Claimant: Respondent (1)

Section 5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 22, 2011, reference 01, that held it failed to establish misconduct in the discharge of the claimant on November 23, 2011, and benefits are allowed. A telephone hearing was held on January 31, 2012. The claimant participated. Larry Corkery, President, and Almir P., Production Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

Whether the employer filed a timely appeal.

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: Claimant filed an unemployment claim effective November 27, 2011. The department mailed a notice for a fact-finding interview to be held on December 21. The claimant and employer production manager participated in the interview.

The department mailed the decision to the employer's representative address of record on December 22, 2011 and it contains a warning that the appeal deadline is January 1, 2012. The deadline date is extended to the next business day due to the holiday. The employer submitted a faxed appeal to the department on January 4, as the company president had been on vacation from December 19 to January 3. The company president handles the employer mail and the company president did not designate anyone to open department correspondence.

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 begins 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 871 IAC 26.2(96)(1) and 871 IAC 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 the employer failed to file a timely appeal.

The department is required to send a decision to the employer address of record that was done in this matter. The decision was timely received, but the two-day appeal delay is due to the president election not to have someone handle the mail. Although the company president designated a representative to handle the employer participation in the department fact-finding interview on December 21, he did not have any person handle the appeal when it was received while he was on vacation. The appeal delay is not for good cause.

DECISION:

The department decision dated December 22, 2011, reference 01, is affirmed. The employer failed to file a timely appeal. The department decision that the employer discharged claimant on November 23, 2011 for no misconduct, remains in force and affect. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css