

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATHLEEN W BENDER**  
Claimant

**BARKER, EDWIN, BARKER, ETHEL**  
Employer

**APPEAL 22R-UI-03436-DZ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 05/10/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Kathleen W Bender, the claimant/appellant, filed an appeal from the August 24, 2020 (reference 02) unemployment insurance (UI) decision that denied benefits because of a May 31, 2020 discharge from work. The parties were properly notified about the hearing. A telephone hearing was held on March 4, 2022. Ms. Bender participated personally. The employer participated through Melinda Miller, property administrator, and Jill Sparks, assistant property manager. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Ms. Bender's appeal filed on time?  
Did the employer discharged Ms. Bender for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Bender at the correct address on August 24, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 3, 2020.

The employer in this matter had previously contacted Ms. Bender about her claim after the employer participated in the fact-finding interview. Ms. Bender was confused because she had filed her UI claim because she was furloughed from a different job. Ms. Bender then called IWD to ask about why this employer was involved in her claim when she had filed for benefits because of her other job. Ms. Bender testified that the IWD representative explained that IWD would automatically make any necessary adjustments.

Ms. Bender received the reference 02 decision in the mail. IWD also issued a different decision, also dated August 24, 2020, (reference 01), that denied Ms. Bender benefits as of May 10 2020 because she was still employed with this employer at her same hours and wages as in her original contract of hire. Ms. Bender also received that decision in the mail. Ms. Bender did not

file an appeal at that time because she thought IWD would automatically make adjustments related to her other job.

IWD issued a third decision, dated April 20, 2021 (reference 03), finding Ms. Bender was overpaid REGULAR UI benefits. Ms. Bender received that decision in the mail. Ms. Bender filed an appeal online on April 29, 2021. The appeal was received by Iowa Workforce Development on April 29, 2021. IWD set up appeals for the reference 01, reference 02, and reference 03 decisions.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Ms. Ixtacuy's appeal of the reference 02 decision 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. Bender received the reference 02 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Bender's delay in filing her appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. Ms. Bender's appeal of the reference 02 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

**DECISION:**

Ms. Bender's appeal of the reference 02 decision was not filed on time. The August 24, 2020, (reference 02) decision is affirmed.



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Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

April 1, 2022

Decision Dated and Mailed

dz/mh

**NOTE TO MS. BENDER:**

- If you were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** To apply for PUA benefits,
  - First go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>.
  - Go to the "WHAT TO EXPECT FROM THE HEARING" section.
  - Go to the last two sentences in that section.
  - The PUA application link is at the end of the second-to-last sentence of the section.
  - The reference number/authorization is the pin number you used for the March 4, 2022 appeal hearing: 103435.

- **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you've received so far.**
- Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **But, you can still apply for PUA benefits at the link above if you were unemployed for reasons related to COVID-19 between February 2, 2020, and June 12, 2021.**