

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA J REYNOLDS

Claimant

APPEAL 20A-UI-01212-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUAIL ENTERPRISES INC

Employer

OC: 01/05/20

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the January 27, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2020. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Will Kellogg, owner.

The administrative law judge took official notice of the administrative records including the fact-finding documents and initial decision. Department Exhibit D-1 (Appeal letter) was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the appeal timely?

An initial unemployment insurance decision (Reference 01) resulting in an allowance of benefits was mailed to the employer's last known address of record on January 27, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 6, 2020. Mr. Kellogg received the decision on January 29, 2020, within the appeal period. He did not contact IWD for guidance or with questions during the appeal period. Mr. Kellogg stated he believed the ten days ran from the date he received the decision, not when it was mailed.

On the front of the initial decision, it stated, "This decision becomes final unless an appeal is postmarked by 02/06/20 or received by Iowa Workforce Development Appeal Section by that date" (See administrative record/initial decision). The back side of the initial decision further stated:

Notice: Deadline for Appeal

The decision is final unless it is appealed. All appeals must be postmarked or received within 10 calendar days from the Decision Date. If the 10th day falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day.

Mr. Kellogg handwrote the appeal on an IWD form and dated it February 6, 2020 (Department Exhibit D-1). It was mailed to the Employment Appeal Board and the envelope was postmarked on February 8, 2020 (Department Exhibit D-1), which is after the final day to appeal. Mr. Kellogg stated he dropped the envelope off in a mailbox at the adjacent grocery store. The appeal was then forwarded to the Appeals Bureau for handling.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. In this case, the employer acknowledged it received the initial decision within the appeal period. Mr. Kellogg stated both that he thought the ten days ran from the date of receipt (not mailing) and that he filed his appeal on February 6, 2020, but it was not postmarked until February 8, 2020, which is approximately ten days from the date of receipt.

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). Using the date the appeal was mailed to the Employer Appeal Board, the employer did not mail its appeal until February 8, 2020, which is after the appeal deadline.

Based on the evidence presented, the administrative law judge concludes that the employer failed to file a timely appeal within the time prescribed by the Iowa Employment Security Law and it *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). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The January 27, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

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