

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DAMIEN SANDIFER**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL NO. 15A-UI-14221-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/06/15**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the December 10, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 20, 2016. The claimant did participate. The employer did participate through Monica Dyar. Employer's Exhibits 1-5 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 December 10, 2015. Claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 20, 2015. The appeal was not filed until December 28, 2015, which is after the date noticed on the disqualification decision. Claimant was out of town visiting his ailing grandmother when the decision arrived from IWD denying benefits. Claimant appealed the decision upon returning home to Iowa. Claimant had no other people to get his mail while he was not in the state.

Claimant had been on FMLA leave to care for his wife that had a broken collarbone until that leave was exhausted on October 26, 2015. (Emp. Ex. 1). Claimant was then allowed personal leave until November 9, 2015. (Emp. Ex. 2). Claimant called in after that date to report his wife's condition. Employer attempted to add in extra FMLA hours to allow claimant to continue working. Employer called up claimant on November 17 asking when he would be in. Claimant responded that he would be in on November 19, 2015 as he had to take his wife to the doctor on November 18, 2015. Employer called on November 18, 2015 and told claimant that he no longer had employment.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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, subsection 10, 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 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, but did not file it as he was out of town.

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). 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 December 10, 2015, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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