

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARLOS M KABAMBA

Claimant

APPEAL 21A-UI-20653-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 05/02/21

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Carlos M Kabamba, the claimant/appellant filed an appeal from the July 22, 2021 (reference 01) unemployment insurance decision that denied benefits based on a voluntary quit on May 2, 2021. The parties were properly notified about the hearing. A telephone hearing was held on November 8, 2021. Mr. Kabamba participated and testified. The employer participated through Christie Gilchrist, manager, and Carl Dyke, manager.

ISSUE:

Is Mr. Kabamba's appeal filed on time?

Did Mr. Kabamba voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Kabama at the correct address on July 22, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by August 1, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. August 1, 2021 was a Sunday; therefore, the deadline was extended to Monday, August 2, 2021.

Mr. Kabamba received the decision in the mail. A few weeks after he received the decision, Mr. Kabamba went to an IWD office in-person. He understood that the IWD representative would file an appeal on his behalf. Mr. Kabamba went back to the IWD office in person on September 21, 2021. The representative told Mr. Kabamba how to appeal and he filed an appeal via fax on September 21, 2021. The appeal was received by Iowa Workforce Development on September 21, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Kabamba's appeal 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).

Mr. Kabamba received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Mr. Kabamba's delay in filing his 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. No other good cause reason has been established for the delay in filing his appeal before the deadline. Mr. Kabamba's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Mr. Kabamba's appeal was not filed on time. The July 22, 2021 (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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December 8, 2021
Decision Dated and Mailed

dz/scn