

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANNE L SHERIDAN
Claimant

APPEAL NO. 16A-UI-07001-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 04/24/16
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Jeanne Sheridan filed an appeal from the June 1, 2016, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Sheridan was discharged on April 28, 2016 for a reason that disqualified her for unemployment insurance benefits. After due notice was issued, a hearing was held on July 13, 2016. Ms. Sheridan participated. Rebecca Ellis represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-07002-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 1, 2016, Iowa Workforce Development mailed a copy of the June 1, 2016, reference 02, decision to Jeanne Sheridan at her last-known address of record. The decision disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Sheridan was discharged on April 28, 2016 for a reason that disqualified her for unemployment insurance benefits. Ms. Sheridan received the decision in a timely manner within a few days of the June 1, 2016 mailing date. The decision stated that an appeal from the decision must be postmarked by June 11, 2016 or received by the Appeals Section by that date. The decision stated that if the appeal deadline fell on a Saturday, Sunday, or legal holiday, the appeal deadline would be extended to the next working day. June 11, 2016 was a Saturday. The next working day was Monday, June 13, 2016. Ms. Sheridan did not take steps to file an appeal by the June 13, 2016 extended deadline. On June 14, 2016, Iowa Workforce Development mailed a copy of the June 14, 2016, reference 04, overpayment decision to Ms. Sheridan's last-known address of record. The overpayment decision contained a June 24, 2016 appeal deadline. On June 23, 2016, Ms. Sheridan faxed her appeal. Ms. Sheridan

indicated that the appeal was from the June 1, 2016 disqualification decision. The Appeals Bureau received the appeal on June 23, 2016 and treated the appeal as an appeal from both the June 1, 2016 disqualification decision and the June 14, 2016 overpayment decision.

Ms. Sheridan cites as reasons for the late appeal from the June 1, 2016 decision a lack of Internet access, a lack of funds, and beginning new employment. Ms. Sheridan had postage stamps on hand. Ms. Sheridan had a motor vehicle. Accordingly the overpayment decision, had received \$1,118.00 in unemployment insurance benefits for the four weeks of April 24, 2016 through May 21, 2016.

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is

deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

Ms. Sheridan's appeal from the June 1, 2016, reference 02, disqualification decision was filed on June 23, 2016, when the Appeals Bureau received the faxed appeal.

The evidence in the record establishes 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 Ms. Sheridan had a reasonable opportunity and the means to file a timely appeal, but failed to do so. Ms. Sheridan received the disqualification decision in a timely manner. Ms. Sheridan had a couple extra days than usual to file the appeal due to the extended appeal deadline. Despite the lack of Internet access, Ms. Sheridan had the means by which to file a timely appeal from the June 1, 2016, reference 02, disqualification decision. Ms. Sheridan had stamps. Ms. Sheridan had received \$1,118.00 in unemployment insurance benefits. Ms. Sheridan had a car. Ms. Sheridan was out in the community. The evidence indicates that Ms. Sheridan elected not to file an appeal from the disqualification decision until after she received the overpayment decision that said she would be required to repay the benefits she had received. The failure to file an appeal within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the lower decision that disqualified Ms. Sheridan for benefits in connection with her separation from Casey's. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The June 1, 2016, reference 02, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on April 28, 2016 separation, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs