

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TONI R COLE**  
Claimant

**SC DATA CENTER INC**  
Employer

**APPEAL NO. 20A-UI-08922-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/20**  
**Claimant: Appellant (1/R)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 95.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Toni Cole filed a late appeal from the June 17, 2020, reference 01, decision that denied benefits for the period beginning April 19, 2020, based on the deputy's conclusion that Ms. Cole was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on September 11, 2020. Ms. Cole participated. Amanda Tschudy represented the employer. Exhibit A, the July 24, 2020 online appeal was received into evidence. The administrative law judge took official notice of the June 17, 2020, reference 01, decision.

**ISSUE:**

Whether there is good cause to deem the late appeal a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 12, 2020, claimant Toni Cole was scheduled to participate in a fact-finding interview with an Iowa Workforce Development Deputy and this employer. Ms. Cole was unable to attend and called Iowa Workforce Development within a few days regarding the missed fact-finding interview. Subsequent to that contact with the Agency, Iowa Workforce Development mailed the June 17, 2020, reference 01, decision to Ms. Cole's last known address of record. The decision denied benefits for the period beginning April 19, 2020, based on the deputy's conclusion that Ms. Cole was not partially unemployed within the meaning of the law. The decision stated that an appeal from the decision must be postmarked by June 27, 2020 or be received by the Appeals Bureau by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. June 27, 2020 was a Saturday and the next working day was Monday, June 29, 2020. The decision included instructions for filing an appeal online, by email, by fax or by regular mail. Ms. Cole received the decision in a timely manner within two or three days of the mailing date of the decision. Ms. Cole reviewed the decision and saw that it denied benefits. Ms. Cole did not note the deadline for appeal. Ms. Cole discarded the decision. Ms. Cole did not take any steps to file an appeal by the June 29, 2020 extended appeal deadline. On July 24 2020, Ms. Cole filed an online appeal from the June 17, 2020, reference 01, decision. The

Appeals Bureau received the appeal on July 24, 2020. Ms. Cole indicated in her online appeal that she had received the decision on July 13, 2020, which was not accurate. Ms. Cole indicated in her appeal that she had just found the decision, which was not accurate.

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

Iowa Code section 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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

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). One 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 evidence in the record establishes an untimely appeal. Ms. Cole received the June 17, 2020, reference 01, decision in a timely manner and had a reasonable opportunity to file an appeal by the June 29, 2020 extended appeal deadline. Ms. Cole did not take any steps to file an appeal by the appeal deadline and waited until 25 days after the appeal deadline had passed to file the online appeal that was transmitted on July 24, 2020. The late filing of the appeal was attributable to Ms. Cole and was not attributable to Iowa Workforce Development or to the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the June 17, 2020, reference 01, decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

#### **DECISION:**

The claimant's appeal was untimely. The June 17, 2020, reference 01, decision that denied benefits for the period beginning April 19, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law, shall stand.

Because the able and available and partial unemployment issues involve a week-by-week determination, this matter is remanded to the Benefits Bureau for consideration of the able and available issues for the period beyond the period adjudicated by the June 17, 2020, reference 01, decision. The Benefits Bureau may determine the starting date of the period to be considered, consistent with its practices.



---

James E. Timberland  
Administrative Law Judge

---

September 14, 2020  
Decision Dated and Mailed

jet/sam

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.