

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUCIA MIRAMONTES
Claimant

DENNIS M WINTER DDS PC
Employer

APPEAL 22A-UI-01025-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/04/21
Claimant: Respondent (1R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code §96.5(2)a - Discharge/Misconduct
Iowa Code §96.5(1) - Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On December 3, 2021, the employer/appellant filed an appeal from the August 25, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant being dismissed on June 24, 2021, and there was no evidence of willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 1, 2022. Claimant did not call in to participate during the hearing. Employer participated through owner, Dr. Dennis Winter. Also present was Loredona Carnovale. Exhibit 1 was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records and of Exhibit D-1, employer's third quarter statement of charges dated November 9, 2021.

ISSUES:

Is claimant's appeal timely?

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Should claimant repay benefits?

Should the employer be charged due to employer participation in fact finding?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on August 25, 2021. The employer denied receiving the decision. Dr. Winter is unaware how employer became aware that claimant qualified for benefits but thinks it is because of his CPA. The administrative

record shows the employer received a Statement of Charges that was mailed to the employer on November 9, 2021. (Exhibit D-1). The employer did not file an appeal until December 3, 2021.

The claimant was employed as a full-time office manager for the employer through June 24, 2021, when she submitted her resignation. (Exhibit 1).

Claimant filed for benefits with an effective date of June 17, 2021. (DBRO). Claimant's weekly benefit amount is \$531.00. (DBRO). Claimant began receiving benefits for week ending July 10, 2021 and continuing through January 1, 2022. (DBRO). Claimant received a total of \$13,806.00 in state unemployment benefits. (DBRO). Claimant reported on her weekly claims that she earned \$0 in wages each week from July 10, 2021 through January 1, 2021. (KCCO). WAGE-A shows that claimant earned income in the third quarter of 2021 with Solace Dental, P.C. of \$6,826.00. Claimant also earned \$10,860.00 in the fourth quarter of 2021 with Solace Dental, P.C.

The employer participated in fact finding by submitting a response to a questionnaire.

REASONING AND CONCLUSIONS OF LAW:

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

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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. Bd. 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 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). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Company of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

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.

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 § 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).

The issue of claimant failing to report her wages while she filed her continuing weekly claims is remanded to the integrity bureau for an initial investigation and determination.

DECISION:

The August 25, 2021, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND:

The issue of whether claimant reported her wage for her weekly continuing claims is remanded to the integrity bureau for an initial investigation and determination.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 22, 2022
Decision Dated and Mailed

cs/kmj