

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MARLENE REED**  
Claimant

**NSK CORPORATION**  
Employer

**APPEAL NO. 20A-UI-11550-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/20**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a late appeal from the June 11, 2020, reference 01, decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 11, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on November 13, 2020. Claimant Marlene Reed participated. Katie Purdy represented the employer and presented additional testimony through Sarah Paschal. Employer witness Virgil Schramm was also on-hand, but did not testify. The administrative law judge took official notice of the June 11, 2020, reference 01, decision and received Exhibit 1, the appeal, 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 11, 2020, Iowa Workforce Development mailed the June 11, 2020, reference 01, decision to the employer's last-known address of record. The decision allowed benefits to the claimant, provided she met all other eligibility requirements, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 11, 2020 for no disqualifying reason. The decision stated that the decision would become final unless an appeal was postmarked by June 21, 2020 or received by the Appeal Section by that day. The decision also 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 21, 2020 was a Sunday and the next working day was Monday, June 22, 2020. The employer's representative of record has at all relevant times been Thomas & Company, formerly known as Thomas & Thorngren, Inc. The employer's address of record has at all relevant times been the United States Postal Service post office box assigned to Thomas & Company. Thomas & Company received the June 11, 2020, reference 01, decision on June 18, 2020. Sarah Paschal, Thomas & Company Hearings Analyst does not know when her company took the first step to process

the decision, but knows that decision was not forwarded to the correct department within Thomas & Company until September 2020. On September 15, 2020, a Thomas & Company representative contacted the employer, NSK Corporation, for a decision regarding whether to pursue the late appeal. On September 18, 2020, a Thomas & Company representative prepared and faxed an appeal to the Appeals Bureau. The Appeals Bureau received the appeal on September 18, 2020. Thomas & Company cites an increased number of claims in the context of the COVID-19 pandemic as the basis for the late filing of the appeal.

## **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 establishes an untimely appeal. The employer's agent of record received the decision in a timely manner, on June 18, 2020. At that point, the employer and its agent still have four days in which to file an appeal by the June 22, 2020 extended appeal deadline. The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Even if the evidence had established that the employer and its agent did not have a reasonable opportunity in the context of the COVID-19 pandemic to file an appeal by the June 22, 2020 extended appeal deadline, the evidence still indicates unreasonable delay in filing the appeal. The evidence fails to establish a reasonable basis for delaying the appeal to September 18, 2020, just three days shy of being three months beyond the appeal deadline. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). The very late filing of the appeal was not due to any Workforce Development error or misinformation or delay or other action of 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 not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the June 11, 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 employer's appeal was untimely. The June 11, 2020, reference 01, decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 11, 2020 for no disqualifying reason, remains in effect.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

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James E. Timberland  
Administrative Law Judge

November 19, 2020  
Decision Dated and Mailed

jet/mh