

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANINE B CHRISTIAN
Claimant

APPEAL NO. 15A-UI-08542-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 06/28/15
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:

Jeanine Christian filed an appeal from the July 15, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that Ms. Christian had been discharged on June 12, 2015 for excessive unexcused absences. After due notice was issued, a hearing was held on August 20, 2015. Ms. Christian participated. Carolyn Cross represented the employer. Lee Trask was also present on behalf of the employer. 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 July 15, 2015, Iowa Workforce Development mailed a copy of the July 15, 2015 reference 01, decision to Jeanine Christian at her last-known address of record. The decision disqualified Ms. Christian for benefits and relieved the employer's account of liability for benefits, based on an Agency conclusion that Ms. Christian had been discharged on June 12, 2015 for excessive unexcused absences. The decision indicated that an appeal from the decision must be postmarked by July 25, 2015 or received by the Appeals Bureau by July 25, 2015. The decision also indicated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. July 25, 2015 was a Saturday and the next working day was Monday, July 27, 2015. Ms. Christian received the reference 01 decision on July 17, 2015.

On July 21, 2015, Iowa Workforce Development mailed two additional decisions to Ms. Christian at her last-known address of record. The July 21, 2015, reference 02, decision allowed benefits to Ms. Christian provided she was otherwise eligible, based on a separation from Casey's. The

July 21, 2015, reference 03 decision was merely a summary document intended to make clear that Ms. Christian was disqualified for benefits in case she had any confusion based on the reference 01 and reference 02 decisions.

All three decisions mailed to Ms. Christian contained a statement of the appeal rights and procedures along with a toll free number she could call if she had any questions about the decision.

Ms. Christian waited until July 29, 2015 to take steps to appeal from the disqualification contained in the July 15, 2015, reference 01, decision. On that day, Ms. Christian submitted an appeal by email. The Appeals Section received the appeal the same day. Though Ms. Christian indicated in the email that she was appealing from the reference 03 decision that she had received on July 23, 2015, the Appeals Section staff correctly determined that the appeal actually pertained to the July 15, 2015, reference 01, decision.

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. Christian's appeal was filed on July 29, 2015, when the Appeals Section received her emailed 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 the appellant did have a reasonable opportunity to file a timely appeal. As of July 17, 2015, when Ms. Christian received the July 15, 2015, reference 01, decision that disqualified her for benefits she had 10 days in which to file a timely appeal by the July 27, 2015 extended deadline. Ms. Christian waited until after that extended deadline expired to file her appeal. Ms. Christian's failure to file an appeal by the appeal deadline was delay on her part and not attributable either to Workforce Development or the United States Postal Service. For that reason, there is not good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which Ms. Christian appealed. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The July 15, 2015, reference 01, 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 the June 12, 2015 discharge, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs