

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARIAN E OWENS
Claimant

VON MAUR INC
Employer

APPEAL 21A-UI-25174-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (6)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.5(1) - Voluntary Quitting
Iowa Code § 96.5(2)a - Discharge for Misconduct

STATEMENT OF THE CASE:

November 11, 2021, claimant/appellant, Darian Owens, filed an appeal from the January 20, 2021, (reference 01) unemployment insurance decision that denied benefits, finding claimant voluntarily quit on June 29, 2019. After proper notice, a telephone hearing was conducted on January 11, 2022. Claimant participated personally. Employer, Von Maur, Inc., did not participate. The following hearings were held together as part of a consolidated hearing: Appeals 21A-UI-25174-DH-T, 21A-UI-25177-DH-T, 21A-UI-25178-DH-T, 21A-UI-25181-DH-T, 21A-UI-25182-DH-T, and 21A-UI-25183-DH-T. Judicial notice was taken of the administrative records.

ISSUES:

Is the appeal timely?
Was the separation a layoff, discharge for misconduct or voluntarily quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and considered the evidence and record, the undersigned finds:

An initial decision (reference 01) was mailed to the claimant/appellant's last known address of record on 01/20/2021. The decision contained a warning that an appeal must be filed by 01/30/21. That date falls on a weekend and therefore, the deadline is extended to the next working day, 02/01/2021. The decision also directed appellant to call the customer service line for assistance.

The last known address was a Coralville, Iowa address. Claimant failed to update her address with Iowa Workforce Development. Claimant moved to Davenport, having a Davenport, Iowa address from November 2020 – May 2021. Claimant then moved to Rock Island, Illinois in June 2021, and is where she lived at the time of the hearing. Claimant provided mail forwarding with the US Postal Office. When claimant received the mail forwarded decision, the deadline had passed by about a week. Claimant did not call the customer service line for assistance. Claimant decided she would not appeal the decision.

Claimant was a part time jewelry sales associate, starting 08/13/2018. Her last day worked was 06/28/2019. On 06/29/2019, claimant called work to take FMLA leave. She was told she had used all her leave and did not have any more FMLA leave to use. Claimant thought she did have FMLA hours remaining but was again told she did not. Claimant did not go to work. Claimant was frustrated and thought by not going into work she would be fired, so she never went back to work. Claimant never contacted employer. Claimant did not attempt to establish her FMLA status or why the employer thought she was out of hours versus her belief she had hours. In her frustration and belief she would be fired, she stopped (quit) going to work over this dissatisfaction.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal was not timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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). Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant's untimely receipt of the decision was because claimant moved from Coralville, Iowa to Davenport, Iowa in November 2020 and then moved from Davenport, Iowa, to Rock Island, Illinois in June 2021. Claimant failed to notify Iowa Workforce Development of her updated addresses. With mail forwarded, when claimant received the decision, the appeal deadline had passed. Claimant decided to not appeal the decision. Claimant did not call the customer service line for assistance where she would have been directed to appeal. She did not believe her current appeal was to this decision, but to the overpayment decisions she received. Claimant does not know exactly when she got decision reference 01, but after receiving it, the overpayment decisions arrived months later and the deadline to appeal had been missed by about a week. This puts the decisions arrival approximately the second week of February 2021. Giving claimant the maximum benefit, let us put the decisions arrival on February 13, 2021. Claimant took at least approximately 271 days minimum to file her appeal.

The administrative law judge concludes claimant's failure to file a timely appeal after receiving notice of the decision was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The January 20, 2021, (reference 01) unemployment insurance decision that denied benefits remains in effect as the appeal in this case was not timely, and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

March 30, 2022
Decision Dated and Mailed

dh/mh

Note to Claimant:

Claimant provided an updated mailing address during the hearing. It is noted on the first page of this decision. Claimant is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information so that their information can be updated within our systems and not just on this one printed decision.