

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**AYOR N ACHICHOL**  
Claimant

**APPEAL NO. 20A-UI-12364-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEABOARD TRIUMPH FOODS LLC**  
Employer

**OC: 06/21/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the September 15, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 7, 2020. The claimant did participate. Employer failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether the appeal is timely?

Was the claimant discharged for misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on September 15, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 25, 2020. The appeal was not filed until October 5, 2020, which is after the date noticed on the disqualification decision. Claimant stated that she was forced to move away from her residence with her mother to a location in the Omaha/Council Bluffs area. Claimant had no transportation back to Sioux City to where her mail was sent and her phone had been disconnected. Claimant stated that she only found out about the decisions when she came back to Sioux City in early October. Claimant had not made arrangements to have the mail forwarded to her in Omaha, and the mail sat until claimant returned to Sioux City.

Claimant has been having a variety of medical problems. Claimant missed work on many occasions as a result of these problem. Each time claimant missed work she would be in contact with employer according to company procedures. When claimant would return to work, she would bring doctors' notes covering her absences.

On June 15, 2020 claimant was given a warning that employer would not accept any more absences. When claimant came to work the next day, she was told that she was terminated for her absences.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin 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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. 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.

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 Section 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 September 15, 2020, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Blair A. Bennett  
Administrative Law Judge

December 14, 2020  
Decision Dated and Mailed

bab/mh