

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL P CURNYN
Claimant

APPEAL NO: 19A-UI-00080-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALBIA BREWING COMPANY LLC
Employer

OC: 05/13/18

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Albia Brewing Company, LLC filed an appeal from a representative's unemployment insurance decision dated May 31, 2018, (reference 01) which held claimant eligible for unemployment insurance benefits, finding that the claimant was dismissed from work on May 16, 2018 but finding that the record did now show willful or deliberate misconduct. After due notice was provided, a telephone hearing was held on January 18, 2019. Claimant participated. Participating as a witness for the claimant was his father Dan Curnyn. Employer participated by Mr. Brian Lindberg, Company Owner.

ISSUE:

The issue is whether the appeal was filed timely.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: a disqualification decision was mailed to the employer's last known address of record on May 31, 2018. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 10, 2018. The appeal was not filed until January 3, 2019 which is after the date noticed on disqualification decision. The employer had elected not to appeal the May 31, 2018 decision that allowed benefits to Mr. Curnyn without disqualification.

Because the employer had not filed an appeal from the adjudicator's decision dated May 31, 2018 within the ten day statutory time period allowed for filing appeals, the decision that allowed benefits to Mr. Curnyn became final.

Mr. Curnyn claimed unemployment insurance benefits for the benefit weeks ending May 19, 2018 through September 1, 2018. Mr. Curnyn then discontinued claiming benefits because he was not able and available for work due to a heart attack. Mr. Curnyn filed an additional claim for benefits effective December 23, 2018 after he was released by his doctor to work. Albia Brewing Company, LLC was sent a notice by Iowa Workforce Development on December 28, 2018 notifying the employer that Mr. Curnyn was "refiling effective 12/23/2018" on his prior claim. The employer had previously responded to Iowa Workforce Development on the notice

of claim that had been sent to the employer on May 17, 2018. The employer again completed a statement of protest alleging the claimant was discharged under disqualifying conditions.

Albia Brewing Co. had disagreed with the adjudicator's unemployment insurance decision dated May 31, 2018, reference 01 but had elected not to file an appeal. After receiving notice that Mr. Curnyn had reopened his claim for benefits, the employer reconsidered its initial decision and elected to file an appeal. The employer filed an appeal on January 7, 2019. The company's appeal referenced the due date set for the employer to provide disqualifying information in response to the notice of claim filed that had been sent to the employer on December 28, 2018.

The employer believed that the initial adjudicator's decision of May 31, 2018, reference 01 had been incorrect, and thought when the notice of claim filed was sent to the company on December 28, 2018 that the company had not only an opportunity to provide disqualifying information but also an opportunity to overturn the adjudicator's determination of May 31, 2018 that the employer had not previously appealed.

The employer was at that time further convinced that Mr. Curnyn should have been disqualified for benefits because he had not followed work instructions and it had been reported to the employer Mr. Curnyn was smoking marijuana. The local police had informed the employer that Mr. Curnyn had been under observation for controlled substance violations while he was working for Albia Brewing Company, LLC. Based upon statements made to the company by an unidentified agency representative, Mr. Lindberg was convinced that the initial determination to allow benefits had been made in error.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

The record in this case shows that the employer had the opportunity to file a timely appeal from the May 31, 2018, reference 01 decision that allowed benefits to Mr. Curnyn without disqualification. The employer read that decision, disagreed with it but chose not to file an appeal within the ten day statutory time limit that was set forth on the decision itself. When the employer did not file an appeal, the decision became final by operational law ten days after the decision date. Although it is understandable that the employer may have been confused by receiving an additional notice of claim filed when Mr. Curnyn refiled his claim effective December 23, 2018. The notice to the employer that Mr. Curnyn was refiling his claim did not

change in any manner the previous decision made by Iowa Workforce Development on the same job separation and that decision had become final because the employer had not, within ten days from the date of the adjudicator's decision, filed an appeal from that determination.

Iowa Admin. Code r. 871-24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

The issues presented in this appeal were resolved in the representative's decision dated May 31, 2018, reference 01 and more than ten calendar days have elapsed between the date that the employer was mailed the adjudicator's determination of May 31, 2018 and the date this appeal was filed.

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any protest regarding the separation from employment.

Iowa Code § 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.

DECISION:

The representative's unemployment insurance decision dated May 31, 2018, reference 01 is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn