

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN A GERLEMAN
Claimant

APPEAL NO. 09A-UI-07462-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYNCH LIVESTOCK INC
Employer

OC: 04/05/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.6.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated May 4, 2009, reference 01, that held the claimant voluntarily quit with good cause attributable to the employer on March 19, 2009, and benefits were allowed.

A telephone hearing was scheduled and held on June 2, 2009. The claimant, and his attorney, Steve Brown, participated. Angela Tiegs, Human Resource Director, participated for the employer. Employer Exhibit A, the appeal letter, was received as evidence.

ISSUE:

The issue is whether the employer filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds that: The department mailed a decision dated May 4, 2009, to the employer's address of record that is their main business office. Human Resource Director Tiegs acknowledges that the decision was received on or about May 6 or May 7, but she is unaware who may have opened the envelope and distributed it to her office that is located across the street. Director Tiegs was absent from the office from about May 8 to May 18, 2009, and she did not designate any individual to handle the employer appeal. Director Tiegs' assistant brought the appeal decision to her attention on May 18, and Director Tiegs acknowledges in her appeal letter by requesting an extension of ten days that the appeal is untimely.

Claimant's attorney moved to dismiss the employer's appeal as untimely, and the motion was granted.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer has failed to establish any good cause for a late appeal in this matter.

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 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

(2) The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The department mailed the decision to the employer's main office that is the address of record. Although there may have been an internal problem regarding the distribution forwarding of the decision to Ms. Tiegs, such an internal matter does not constitute a good cause for a late appeal.

DECISION:

The department representative's decision dated May 4, 2009, reference 01, is affirmed. The employer failed to file a timely appeal. Benefits are allowed, provided the claimant is otherwise eligible.

R. L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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