

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA K SUBBERT**  
Claimant

**APPEAL NO: 11A-UI-03048-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE NEW HOMESTEAD**  
Employer

**OC: 10/10/10  
Claimant: Respondent (1)**

Section 5-2-a – Discharge  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated November 8, 2010, reference 01, that held it failed to establish misconduct in the discharge of the claimant on October 4, 2010, and benefits are allowed. A telephone hearing was held on March 31, 2011. The claimant participated. Maradith Janssen, Administrator, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the employer filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The department mailed the decision to the employer's address of record on November 8, 2010. The decision states the appeal deadline date is November 18. An employer representative did receive the decision, but placed it in claimant's personnel file. After the employer received a department statement of benefit charges, it faxed an appeal to the department on January 31, 2011.

**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 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).

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

The administrative law judge concludes the employer failed to file a timely appeal.

The department is required to send a decision to the employer address of record that was done in this matter. The appeal delay between the employer representative who received it and the employer-administrator is an internal matter, and it is not a good cause to excuse the timeliness of an appeal. The faxed appeal of January 31, 2011 was well beyond the deadline date of November 18.

**DECISION:**

The department decision dated November 8, 2010, reference 01, is affirmed. The employer failed to file a timely appeal. The department decision that the employer discharged the claimant for no misconduct on October 4, 2010, remains in force and affect. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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