

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MIRNES KLIKO**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL NO. 21A-UI-10042-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/31/21  
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant, Mirnes Kliko, filed an April 9, 2021 late appeal from March 25, 2021, reference 01, decision that denied benefits effective January 31, 2021, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on June 24, 2021. Claimant participated. Amih Sallah represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-10044-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and WAGE-A.

**ISSUES:**

Whether the appeal from the March 25, 2021, reference 01, decision was timely.  
Whether the Benefits Bureau modified and rendered the March 25, 2021, reference 01, decision moot by entering the April 6, 2021, reference 01, decision.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective January 31, 2021. On March 25, 2021, the Benefits Bureau mailed the reference 01 decision to the claimant at his North Liberty last-known address of record. The reference 01 decision denied benefits effective January 31, 2021, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. The reference 01 decision stated that the decision would be final unless an appeal was postmarked by April 4, 2021 or was received by the Appeal Section by that date. The reference 01 decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. April 4, 2021 was a Sunday. The next working day was April 5, 2021. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal from the reference 01 decision by the April 5, 2021 extended deadline for appeal.

On April 6, 2021, the Benefits Bureau mailed the reference 02 decision to the claimant's address of record. The reference 02 decision denied benefits effective January 31, 2021, based on the deputy's conclusion that the claimant was still employed in his job under the same hours and wages as existed in the original contract of hire and could not be considered partially unemployed within the meaning of the law. The claimant received the reference 02 decision on April 9, 2021 and filed an online appeal from the reference 02 decision that same day.

Both the reference 01 and reference 02 decision cited Iowa Code section 96.4(3) as the basis for the denial of benefits. Both referenced the same employer and employment relationship. Both used the same benefit denial date.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date

entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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 evidence in the record establishes that the claimant received the March 25, 2020, reference 01, decision in a timely manner, had the ability and a reasonable opportunity to file an appeal by the April 5 2021 appeal deadline, but did not file an appeal until April 9, 2021. The late filing of the appeal was not attributable to IWD error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Though the administrative law judge lacks jurisdiction to disturb the March 25, 2021, reference 01, decision, the Benefits Bureau retained jurisdiction to enter affirm, modify, or reverse a prior decision, in which case the latter decision takes precedence.

Iowa Administrative Code rule 817-24.19(3) provides:

(3) Upon receiving a written request for review or, on its own initiative and on the basis of the facts as it may have in its possession or may acquire, the benefits bureau may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. The claimant or any other party filing the request for review shall be promptly notified of the decision or referral. Unless the claimant or any other party files an appeal within ten days after the date of mailing, the latter decision shall be final and benefits shall be paid or denied in accordance therewith.

A reasonable person would conclude the impact of the April 6, 2021, reference 02, decision was to modify the March 25, 2021, reference 01, decision. See Appeal Number 21A-UI-10044-JTT concerning the claimant's appeal from the April 6, 2021, reference 02, decision.

**DECISION:**

The claimant's appeal from the March 25, 2021, reference 01, decision was untimely. The March 25, 2021, reference 01, decision would remain in effect but for the April 6, 2021, reference 02, decision that effectively modified the decision. See Appeal Number 21A-UI-100443-JTT concerning the claimant's appeal from the April 6, 2021, reference 02, decision.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

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James E. Timberland  
Administrative Law Judge

July 7, 2021  
Decision Dated and Mailed

jet/lj