

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD A HARTWEG
Claimant

ROQUETTE AMERICA INC
Employer

APPEAL 21A-UI-18874-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/16/21
Claimant: Appellant (1)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code §96.5(2)a – Discharge for Misconduct
Iowa Code §96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Richard A Hartweg, the claimant/appellant, filed an appeal from the August 12, 2021, (reference 01) unemployment insurance (UI) decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 18, 2021. Mr. Hartweg participated and testified. The employer participated through Kimberly Smith. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Mr. Hartweg's appeal filed on time?
Was Mr. Hartweg discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Hartweg at the correct address on August 12, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by August 22, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. August 22, 2021 was a Sunday; therefore, the deadline was extended to Monday, August 23, 2021.

Mr. Hartweg received the decision on, or about, Monday, August 16. Mr. Hartweg immediately contacted IWD. Mr. Hartweg testified that the representative told him that they would forward his case to the ten-times department to see if he might be eligible for benefits based on earning ten times his weekly benefit amount in the previous eighteen months. Mr. Hartweg testified that the representative told him to check in in about a week. Mr. Hartweg contacted IWD again on Thursday of the following week, August 26. Mr. Hartweg testified that the representative told him that previous representative had given him wrong information and that the information in the August 12, 2021 (reference 01) decision was correct – he could become eligible if he earned wages for insured work equal to ten times his weekly benefits amount after his separation date.

Mr. Hartweg filed an appeal online on August 27, 2021. The appeal was received by Iowa Workforce Development on August 27, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Hartweg's appeal was not filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

Mr. Hartweg received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. When Mr. Hartweg contacted IWD on Monday, August 16, he still had a full week to file an appeal before the Monday, August 23 deadline. The representative told him to check back in

about a week. Mr. Hartweg did not check back in until Thursday of the following week, and did not file his online appeal until August 27. Mr. Hartweg's delay in filing his appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay in filing her appeal before the deadline. Mr. Hartweg's appeal was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Mr. Hartweg's appeal was not filed on time. The August 12, 2021 (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
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October 26, 2021
Decision Dated and Mailed

dz/kmj