

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FRANK SYLALOM
Claimant

APPEAL 18A-UI-04329-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPRING VALLEY RADIO INC
Employer

**OC: 11/26/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 6, 2017, (reference 02) unemployment insurance decision that denied benefits based upon a decision in a prior benefit year for the same separation. The parties were properly notified about the hearing. A telephone hearing was held on May 1, 2018. Claimant participated. Employer participated through district manager Trevor Heintz. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?
Was the separation adjudicated in a prior claim year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim with an effective date of November 20, 2016, based on a separation from a former employer, Cellular Advantage. Claimant then became employed with employer and was separated on September 20, 2017. Claimant reopened his claim for unemployment insurance benefits on October 8, 2017.

On November 1, 2017, a reference 02 decision was issued denying claimant benefits based on his separation from employment with employer. Claimant received the decision shortly thereafter, within the appeal period. On November 1, 2017, the agency issued a reference 03 decision stating he was eligible for benefits based on his separation with Cellular Advantage based on the fact he earned ten times his weekly benefit amount since the separation from employment. On November 1, 2017, a reference 04 summary decision was also issued explaining that despite the two decisions, the bottom line was that claimant was disqualified from receiving benefits from September 20, 2017, going forward until he earned ten times his weekly benefit amount. Claimant did not file an appeal of any of the decisions and continued filing weekly claims, not receiving benefits.

On November 26, 2017, claimant filed a new claim as his claim year expired. On November 27, 2017, a reference 05 decision was issued denying claimant benefits based on his separation from employment with employer. Claimant received the decision shortly thereafter, within the appeal period. Claimant did not timely appeal the decision.

On December 6, 2017, a reference 02 decision was issued finding the issue of whether claimant was allowed benefits based on his separation from employer had been previously adjudicated and stating the denial decision remained in effect. Claimant received the decision shortly thereafter, within the appeal period. Claimant did not timely appeal that decision.

For some unknown reason, claimant's new claim was not locked and he began receiving benefits. Claimant continued filing weekly continued claims. By March 29, 2018, the agency caught the error and a reference 05 decision was issued finding claimant overpaid benefits for the 17 weeks ending March 24, 2018. Claimant filed an appeal on April 5, 2018.

The separation at issue has been adjudicated in a prior claim year effective November 20, 2016, as the unemployment insurance decision dated November 1, 2017 (reference 02) and November 27, 2017 (reference 05). Those decisions in favor of employer have been affirmed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is untimely.

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 unemployment insurance 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec.*

Comm'n, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Claimant asserts he believed he was allowed benefits based on a November 1, 2017, decision that allowed him benefits based on employment with another employer. However, a summary decision came the same day explaining he was ultimately denied benefits despite what could have been confusing, conflicting decisions. Claimant never received benefits for the weekly claims he filed before the 2016 benefit year expired. Then claimant received an additional decision denying benefits based on a separation from employer and the current decision in December which also denied benefits based on his separation from this employer. He appealed neither. The claimant either knew or should have known by that point that he needed to appeal the decisions denying him benefits based on his separation from employer.

The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

Even if claimant's appeal is considered timely, claimant is still disqualified from receiving benefits. The separation at issue was been adjudicated in a prior claim year and claimant was denied benefits. No disqualification is imposed 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. Iowa Admin. Code r. 871-24.28(6-8) and 871-24.19(1). That decision has been affirmed in favor of employer.

DECISION:

The December 6, 2017, (reference 02) unemployment insurance decision is affirmed. The appeal is not timely, and the decision denying benefits remains in full force and effect.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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