

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYDIA G DOLO
Claimant

APPEAL NO: 13A-UI-04893-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 02/17/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(9) – Suspension or Disciplinary Layoff
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Lydia G. Dolo (claimant) appealed a representative's March 20, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after what was at least a temporary separation from employment with Mosaic (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on June 12, 2013. The claimant participated in the hearing and was represented by Alfred Dennis, who also provided testimony on her behalf. David Williams of Equifax Workforce Solutions appeared on the employer's behalf and presented testimony from one witness, Teresa TeKolste. During the hearing, Exhibit A-1 and Employer's Exhibit One were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on March 20, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 30, 2013, a Saturday. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, April 1, 2013. The appeal was not filed until it was hand-delivered to a local Agency office on April 24, 2013, which is after the date noticed on the disqualification decision.

The representative's decision had specified in pertinent part:

DECISION

:

**YOU ARE NOT ELIGIBLE TO RECEIVE UNEMPLOYMENT INSURANCE BENEFITS.
THE EMPLOYER'S ACCOUNT WILL NOT BE CHARGED.**

EXPLANATION OF DECISION:

**OUR RECORDS INDICATE YOU WERE PLACED ON DISCIPLINARY SUSPENSION
ON 02/19/13, FOR VIOLATION OF COMPANY RULES.**

TO BECOME ELIGIBLE FOR BENEFITS, YOU MUST:

- 1. EARN WAGES FOR INSURED WORK EQUAL TO TEN (10) TIMES YOUR WEEKLY
UNEMPLOYMENT BENEFIT AMOUNT AFTER YOUR SEPARATION DATE; AND**
- 2. MEET ALL THE OTHER ELIGIBILITY REQUIREMENTS.**

The decision further indicated that "IF YOU HAVE QUESTIONS OR NEED INFORMATION,
CALL THE WORKFORCE DEVELOPMENT CENTER AT (515)281-9619 . . ."

While the representative's decision indicates that the disqualification will continue to be in effect until the claimant has earned requalifying wages and does not suggest that the disqualification would be automatically dissolved once the suspension was over, the claimant asserts, in essence, that while she understood that she was being denied benefits, she did not understand that the denial also continued to apply after the separation became final when she was discharged on April 5, and that she did not understand what she needed to do to appeal.

English is not the claimant's first language, but she has been speaking and reading English even growing up in Liberia, prior to moving to the United States in 2000. Since 2000, the claimant has continued to routinely speak and read English. She attended a semester of further education at a community college, pursuing nursing. While her grammar might not be perfectly correct, she was able to complete narrative responses in written English on her job application with the employer in 2008. She was able to be fully engaged in the hearing without the need for an interpreter.

The claimant concedes that she did not contact the Agency at the number provided on the representative's decision to seek clarification. She did go to the community support office of where Mr. Dennis is on staff to seek information and assistance, and she was advised that she should go to the Agency and make an appeal. She made that contact with the community support office approximately April 6, 2013. Yet, she did not contact the Agency and make her appeal until April 24.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten

calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The representative's March 20, 2013 decision (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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