

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FERNANDO NUNO RENTERIA
Claimant

APPEAL NO. 20A-UI-06554-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SABRE COMMUNICATIONS CORP
Employer

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Fernando Nuno-Renteria filed a late appeal from the June 5, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Nuno-Renteria was discharged on April 16, 2020 for misconduct in connection with the employment. After due notice was issued, a hearing was held on July 24, 2020. Mr. Nuno-Renteria participated. Joli Gehring, Human Resources Business Partner, represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the June 5, 2020, reference 01, decision.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 5, 2020, Iowa Workforce Development mailed the June 5, 2020, reference 01, decision to Fernando Nuno-Renteria at his last-known address of record. The decision disqualified Mr. Nuno-Renteria for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Nuno-Renteria was discharged on April 16, 2020 for misconduct in connection with the employment. The decision stated that an appeal from the decision must be postmarked by June 15, 2020 or be received by the Appeal Section by that date. Mr. Nuno-Renteria received the decision in a timely manner, prior to the appeal deadline, but did not file an appeal by the appeal deadline. Mr. Nuno-Renteria resides with his parents. The family has an established system for distributing mail. Mr. Nuno-Renteria's parents collect the mail from the mailbox and place the mail on the kitchen table. Mr. Nuno-Renteria elected not to review the mail on the kitchen table from the time the document arrived, most likely on June 8, 2020, until June 19, 2020. At that point, Mr. Nuno-Renteria reviewed his mail, opened and read the correspondence, and noted the appeal deadline had passed. On June 19, 2020, Mr. Nuno-Renteria downloaded and printed an appeal form, added his appeal information to the form, and faxed the form to the Appeals Bureau. The Appeals Bureau received the appeal on

June 19, 2020. Mr. Nuno-Renteria subsequently emailed an gratuitous second appeal on June 23, 2020.

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). One 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 an untimely appeal. The record shows that the appellant, Mr. Nuno-Renteria did have a reasonable opportunity to file a timely appeal by the June 15, 2020 deadline. Mr. Nuno-Renteria was well-familiar with his family's practice for distributing mail. For at least a week and a half, Mr. Nuno-Renteria elected not to review the correspondence his parents had placed on the kitchen table pursuant to the usual practice, and therefore did not open or review the June 5 decision until June 19, four days after the appeal deadline. The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was attributable to Mr. Nuno-Renteria's unreasonable conduct relative to receiving and reviewing his mail. The late filing of the appeal was not caused by Iowa Workforce Development or the United States Postal Service. There is not good cause to treat the law 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 June 5, 2020, reference 01, decision that disqualified Mr. Nuno-Renteria for benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The June 5, 2020, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on April 16, 2020 for misconduct in connection with the employment, remains in effect.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

jet/sam