

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MITCHELL A BENNETT
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-14725-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
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/appellant filed an appeal from the June 3, 2021 (reference 02) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits due to his discharge from employment. A telephone hearing was held on August 20, 2021. The parties were properly notified of the hearing. The claimant, Mitchell Bennett, participated personally. Claimant's mother, Sherry Lucas, also provided testimony on claimant's behalf. The employer, Hy-Vee Inc., participated through Erin Bewley and Liz McMahon. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

An unemployment insurance decision was mailed to the claimant's correct address on June 3, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 13, 2021. The decision included clear and concise instructions for filing an appeal. The claimant did not take the steps to file an appeal by the June 13, 2021, appeal deadline.

Claimant was not sure whether he received the June 3, 2021, decision in the mail. Claimant was not sure as to whether he has ever seen a hard copy of the June 3, 2021, decision. Claimant confirmed that he was living with his mother at 3911 Tripp St, Unit 9, in Ames, Iowa on June 3, 2021. Claimant was also living with his mother while he was employed by Hy-Vee; however, he moved away from the Tripp Street address shortly after his employment with Hy-Vee ended back in April, 2020. Ms. Lucas estimated that Claimant moved sometime in March, 2020. That being said, Claimant's mother remained at the Tripp Street address after Claimant moved out. Claimant eventually moved back to the 3911 Tripp Street address in approximately

June, 2021. Regardless of when claimant moved back to 3911 Tripp Street, he listed the 3911 Tripp Street address on his original claim, and he testified that he was living at the 3911 Tripp Street address on or about June 3, 2021, the date of the original decision.

At hearing, Claimant testified that he contacted IWD in June 2021. He could not recall the exact date. Claimant testified he was notified of the June 3, 2021, decision on June 25, 2021. He did not file his appeal until April 28, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 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. 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 evidentiary record shows that the appellant did have a reasonable opportunity to file a timely appeal. The June 3, 2021, decision was mailed to the correct address of record. Claimant listed his mother's address when filing his original claim for benefits. While it appears there was a period of time in which claimant lived at a different address, claimant testified he was living at the 3911 Tripp Street address on June 3, 2021, the date of the IWD representative's decision. Moreover, even if claimant was in the process of moving, it cannot be said that the move would have impacted his receipt of the June 3, 2021, decision. When claimant filed his claim for benefits, he listed his mother's address of 3911 Tripp Street as his mailing address. Even if claimant was not living with his mother at 3911 Tripp Street when he filed his original claim in March, 2021, this is not a situation in which the IWD representative's decision was sent to an old, outdated address. Claimant did not list the address he was moving away from as his mailing address; rather, he provided the address he was moving to. It logically follows that claimant knew, regardless of his living situation, that he would be able to receive mail from IWD at his mother's residence. At no point did Claimant attempt to update his mailing address with IWD.

The administrative law judge concludes that failure 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); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The June 3, 2021 (reference 01) unemployment insurance decision denying benefits is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Michael J. Lunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

September 16, 2021
Decision Dated and Mailed

mjl/kmj