

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMYEE K SIMMONS
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 22A-UI-06963-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/02/22
Claimant: Respondent (6)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.3(7) - Overpayment
Iowa Admin. Code r. 871-24.10 - Employer Participation in Fact Finding

STATEMENT OF THE CASE:

March 15, 2022, Employer/Appellant, Casey's Marketing Company, filed an appeal from the March 2, 2022, (reference 02) unemployment insurance decision that granted benefits based upon a 01/26/22 dismissal from work that the record failed to show willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 16, 2022. Claimant, Amyee Simmons, failed to participate. Employer participated through Tabatha Groves, store manager. Judicial notice was taken of the administrative record, including DBRO and KFFD.

ISSUES:

Is the appeal timely?
Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
Was the claimant overpaid benefits?
Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

FINDINGS OF FACT:

Having heard testimony and reviewed evidence in the record, the undersigned finds:

The above decision (reference 02) was mailed to employer's last known address of record on 03/02/2022. Employer advised the address on the decision is the corporate headquarters address in Ankeny, Iowa. To be timely, an appeal needed to be filed on or before 03/14/2022. The decision directs the parties to call the customer service line for assistance or if they have any questions. Employer provided no information about when they received the decision or why the appeal was faxed on 03/15/22. Employer did not utilize the appeal form provided by IWD, which has questions asking when the decision was received and if the appeal is filed late, why.

Ms. Groves had no knowledge regarding when the decision would have been received or why the appeal was faxed in on 03/15/22.

Employer received the decision at the corporate headquarters in Ankeny, Iowa. The appeal is submitted by their office and/or agent in Chicago, Illinois on March 15, 2022. Ankeny had to send it to Chicago for Chicago to fax the appeal. Employer has provided no evidence to the contrary, it is found that the decision was timely received by employer. Employer submitted their appeal late and offered no reason why it was late.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely.

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*

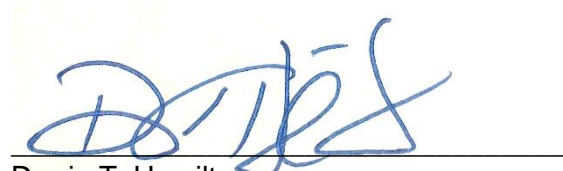
v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Appellant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. The decision was timely received at appellant's last known address. The appeal was not timely submitted. Employer failed to address the issue of timely appeal in their appeal and employer's witness had no knowledge regarding this issue, other than confirming that the address on the decision is employer's corporate office in Ankeny, Iowa.

The appeal is not timely. A good cause reason was not established for the delay. The administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

The representative's March 2, 2022, decision (reference 02) granting benefits remains in effect, as the appeal is untimely and is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

June 16, 2022
Decision Dated and Mailed

dh/mh