

**IOWA DEPARTMENT OF INSPECTION AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

---

**SARA BREKKE**  
Claimant

**APPEAL NO. 23R-UI-00984-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TLH CLEANING LLC**  
Employer

**OC: 09/25/22  
Claimant: Respondent (1)**

---

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits  
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated October 31, 2022, (reference 03) which held claimant eligible for unemployment insurance benefits. Employer's appeal was dismissed when employer did not show up for the previously scheduled hearing. Employer then appealed this matter to the Employment Appeals Board who remanded it back to the appeals level for further proceedings. After due notice, a hearing was scheduled for and held on February 17, 2023. Claimant participated personally. Employer participated by Ted Hammes, Tonia Stevens, and Fran Malloy. The administrative law judge took notice of the administrative record.

**ISSUES:**

Whether the appeal was timely filed?

Whether claimant was discharged for misconduct?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the employer's last known address of record on October 31, 2022. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 10, 2022. The appeal was not filed until November 14, 2022, which is after the date noticed on the disqualification decision. Employer stated that he believed he sent the appeal in the mail on November 9, 2022. Employer provided no proof of this activity. The Appeals folder for this matter contains a typed appeal from the employer is stated on the folder as having been filed in person at the IWD desk on November 14, 2022. This date is further supported by other email documentation indicating that the appeal filing was forwarded by email to the appeals email on November 14, 2022.

Claimant last worked for employer on August 29, 2022. Claimant worked as a part time janitor for employer working at the Story City rest stops off I-35. On August 28, 2022 claimant put in a notice of quit stating that she was going to quit four weeks after the notice. The notice indicated that claimant had ongoing problems with a former employee. Claimant shared information with her supervisor on many occasions indicating that the former employee was harassing her – both at home and at work. Claimant had a no trespassing order issued against claimant for her house, but had no like order from her employment sites.

In May 2022 claimant had an argument with this coworker – who was still working for employer at the time. Claimant testified that the coworker physically and verbally went after her. She chose not to contact the police about the May incident that occurred at work, but shared details with her supervisor.

Claimant continued to share incidents with coworkers and her supervisor about ongoing harassment at her home and work. Employer did not do anything to protect claimant. On August 28, 2022 the former coworker came to the rest stop and spoke with a different supervisor. While there, he made rude and offensive statements to claimant. Claimant decided shortly thereafter that she could not continue with this job and have him come by whenever he wanted. She sent a quit notice to employer stating amongst other things that she knew employer couldn't do anything about the harassment.

When this quit notice was shared with owner of the business, he came to talk with claimant. The owner then went to the police to attempt to get a no trespassing order entered against the former coworker at these rest stops.

Although the employer took these steps, they were not taken such that claimant would continue working for employer. Employer had already accepted claimant's resignation.

Claimant has received state unemployment benefits in the amount of \$3,195.00.

Employer did substantially participate in fact finding in this matter by participating in a fact finding hearing.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 begin 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).

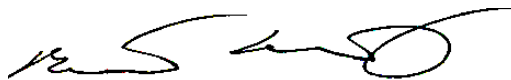
Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. 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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. Employer did not present substantive evidence that would rebut the documentary evidence in the administrative file that employer did not file a timely appeal in this matter.

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 Section 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The October 31, 2022, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



---

Blair Bennett | Administrative Law Judge II  
Iowa Department of Inspections & Appeals

February 23, 2023  
Decision Dated and Mailed

bab/mh

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.