

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

JILL E CARTER
Claimant

APPEAL NO. 22A-UI-15363-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 05/29/22
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

On July 20, 2022, Jill Carter (claimant) filed a late appeal from the June 20, 2022 (reference 01) decision that disqualified the claimant for benefits and that held the employer’s account would not be charged for benefits, based on the deputy’s conclusion the claimant was discharged on June 1, 2022 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on August 29, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the toll-free number at the time of the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-15364-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 01 and 03 decisions, DBRO, KLOG. The administrative law judge took official notice of the distance, per Google Maps, between the claimant’s residence and the United States Post Office located at 4018 Marquette Street, Davenport, Iowa.

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:

The claimant established an original claim for benefits that was effective May 29, 2022.

Jill Carter (claimant) established an original claim for benefits that was effective May 29, 2022. On June 13, 2022, the claimant provided Iowa Workforce Development an updated mailing address. The updated mailing address was for an apartment on East 37th Street in Davenport. In March or April 2022, someone burned the mailboxes at the claimant’s apartment complex. Within a week of the incident, the claimant received notice she would need to commence collecting her mail from the United States Post Office located at 4018 Marquette Street, Davenport, Iowa. The claimant resides 1.9 miles from the post office in question. The claimant would have go to the post office and present proof of identity at the service counter to retrieve

her mail. This system of receiving mail continued into early August 2022, at which time the mailboxes were replaced at the claimant's apartment complex and the claimant recommenced receiving mail at her complex. The claimant asserts that during the period when the claimant was required to collect her mail from the post office, she went to the post office once a week for that purpose.

The claimant missed the June 29, 2022 fact-finding interview that preceded June 30, 2022 (reference 01) decision that disqualified her for benefits. The notice of the fact-finding interview was mailed to the claimant on June 22, 2022. The claimant did not collect the fact-finding interview notice from the post office until after the fact-finding until after June 29, 2022. The claimant received a phone call and voicemail message at the time of the June 29, 2022 fact-finding interview. The voicemail message would have directed the claimant to call within 30 minutes of the message, would have stated a decision would issue in the coming days, and would have stated the claimant had the right to appeal the decision.

On June 30, 2022, Iowa Workforce Development mailed the June 30, 2022 (reference 01) decision to the claimant's last-known address of record. The reference 01 decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on June 1, 2022 for conduct not in the best interest of the employer. The reference 01 decision stated the decision would become final unless an appeal was postmarked by July 10, 2022 or was received by the Appeals Section by that date. The decision stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. July 10, 2022 was a Sunday and the next working day was Monday, July 11, 2022. The reference 01 decision was delivered to the Davenport post office in a timely manner, prior to the deadline for appeal. The claimant cannot recall when she collected the reference 01 decision from the post office, but recalls it was before she collected the July 12, 2022 (reference 03) overpayment decision. The claimant did not take steps to file an appeal from the reference 01 disqualification decision by the July 11, 2022 extended appeal deadline.

On July 12, 2022, Iowa Workforce Development mailed the July 12, 2022 (reference 03) decision to the claimant's last-known address of record. The reference 03 decision held the claimant was overpaid \$1,592.00 in benefits for four weeks between May 29, 2022 and June 25, 2022, due to the earlier decision that disqualified the claimant for benefits based on her discharge from employment with REM Iowa Community Services, Inc. The reference 03 decision stated the decision would become final unless an appeal was postmarked by July 22, 2022 or was received by the Appeals Section by that date. The July 12, 2022 (reference 03) decision was delivered to the Davenport post office in a timely manner, prior to the deadline for appeal.

On July 20, 2022, the claimant completed an online appeal from the July 12, 2022 (reference 03) overpayment decision. The claimant stated in her appeal that she had received the reference 03 overpayment decision on or about July 12, 2022. This date of receipt is unlikely, given it is the date IWD mailed the overpayment decision to the claimant. However, the claimant testified at the August 29, 2022 appeal hearing that the claimant collected the reference 03 overpayment decision a couple days prior to filing an appeal, which would mean the claimant collected the reference 03 overpayment decision from the post office on or about July 18, 2022.

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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the June 30, 2022 (reference 01) disqualification decision. The appeal was filed on July 20, 2022, when the Appeals Bureau received the online appeal from the July 12, 2022 (reference 03) overpayment decision. The evidence establishes that the June 30, 2022 (reference 01) decision was delivered to the claimant's local post office in a timely manner and was available to the claimant to collect in a timely manner, prior to the deadline for appeal. There is no evidence to suggest otherwise. The voicemail message the claimant received on June 29, 2022, regarding the June 29, 2022 missed fact-finding interview, would have alerted the claimant to expect a decision in the mail in the coming days. The claimant cannot recall when she collected the reference 01 decision from the post office. The weight of the evidence indicates the claimant had a reasonable opportunity to file an appeal from the reference 01 decision, despite the unusual arrangement for receiving her mail. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation. Nor was the late filing of the appeal attributable to the United States Postal Service. Though the claimant had been without mail service to her residence for an extended period, she continued to have mail service through the post office located less than two miles from her home. Since March or April 2022, the claimant had been accustomed to collecting her mail from the post office. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the reference 01 decision that disqualified the claimant 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 from the June 30, 2022 (reference 01) decision was untimely. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the June 1, 2022 discharge, remains in effect.



James E. Timberland
Administrative Law Judge

October 12, 2022
Decision Dated and Mailed

jt/jb

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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.

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 then file a petition for judicial review in district court.

2. If no one files 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 Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.

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 nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.