

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW G ORBAN
Claimant

A-LERT
Employer

APPEAL 18A-UI-09993-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/31/17
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 January 22, 2018 (reference 01) unemployment insurance decision that found the claimant was not eligible for benefits due to a discharge for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on October 17, 2018. The claimant participated personally. The employer participated through witnesses Brenda Wooten and Kenneth Goff. Employer's Exhibits 1 through 5 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

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

A decision dated January 22, 2018 (reference 01), which found that the claimant was not eligible for unemployment insurance benefits due to a discharge for misconduct, was mailed to the claimant's correct address of record located on Wisconsin Street SW in Cedar Rapids, Iowa. The claimant does not remember whether he received a copy of the decision in the mail within ten days after the mailing date.

Claimant moved out of the residence located on Wisconsin Street SW in Cedar Rapids, Iowa effective February 1, 2018. He did not complete a change of address request with the United States Postal Service at that time because he was homeless and living in his vehicle. It was not until September of 2018 when he was able to update his address with Iowa Workforce Development to a friend's address of record.

Claimant did contact Iowa Workforce Development by telephone sometime in January of 2018 and was told that he was denied benefits. Claimant never requested a copy of the denial decision dated January 22, 2018 (reference 01). Claimant testified that he was in a bad point in his life at this time and figured he should just go find a new job.

The January 22, 2018 (reference 01) decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 1, 2018. The appeal was filed at a local Iowa Workforce Development office on October 2, 2018, which is after the date noticed on the decision.

Claimant has worked at Dryspace following his separation from employment with this employer. Claimant may submit his paystubs to Iowa Workforce Development Benefits Bureau for a determination of whether he has earned wages for insured work equal to ten times his weekly benefit amount since his separation from A-Lert and whether he has requalified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal is untimely.

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.

(emphasis added).

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). 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).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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**.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

(emphasis added).

Claimant testified that he did not know whether he received a copy of the decision in the mail or not. Claimant testified that he learned about the decision when he contacted Iowa Workforce Development in January of 2018. Claimant did not present credible testimony that his failure to comply with the jurisdictional time limit to file an appeal was due to any agency error, agency misinformation, or some type of delay by the United States Postal Service. Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge lacks jurisdiction to make a determination on appeal whether the separation from employment was disqualifying. Iowa Code § 96.6(2); *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979). As such, the decision of the representative must remain in effect.

Claimant may submit his paystubs from Dryspace to Iowa Workforce Development Benefits Bureau for a determination of whether he has earned wages for insured work equal to ten times his weekly benefit amount since his separation from A-Lert and whether he has requalified for benefits.

DECISION:

The January 22, 2018 (reference 01) decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs