

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BRANDY S STIER**  
Claimant

**APPEAL NO. 15A-UI-07364-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOWROYD WRIGHT EMPL AGENCY INC  
APPLE 1 EMPLOYMENT SERVICE**  
Employer

**OC: 04/12/15  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Brandy Stier filed a late appeal from the April 30, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the Ms. Stier had been discharged on April 17, 2015 for excessive unexcused absenteeism. After due notice was issued, a hearing was held on July 30, 2015. Ms. Stier participated. The employer provided written notice that the employer was waiving its participation in the hearing. Department Exhibits D-1 and D-2 were into evidence.

**ISSUE:**

Whether there is good cause to treat Ms. Stier's late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 30, 2015, Iowa Workforce Development mailed a copy of the April 30, 2015, reference 01, decision to Brandy Stier's last-known address of record. The decision disqualified Ms. Stier for unemployment insurance benefits and relieved the employer of liability for benefits, based on an Agency conclusion that the Ms. Stier had been discharged on April 17, 2015 for excessive unexcused absenteeism. The decision contained a warning that an appeal from the decision must be postmarked by May 10, 2015 or received by the Appeals Section by that date. Ms. Stier most likely received the decision in a timely manner, prior to the deadline for appeal. However, Ms. Stier asserts that she first received the decision on or about May 13 or 14, 2015. Ms. Stier does not believe the envelope in which she received the decision bore any markings to indicate that it was misdirected before Ms. Stier received it. The decision was mailed from Des Moines to Ms. Stier's home in Des Moines. Ms. Stier had started new employment and elected not to file an appeal from the decision at the time she received it. Ms. Stier separated from the new employment in June 2015. On June 26, 2015, Ms. Stier drafted an appeal and faxed it to the Appeals Section. The Appeals Section received the appeal on June 26, 2015.

## REASONING AND CONCLUSIONS OF LAW:

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 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, subsection 10, 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 871 AC 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 871 IAC 24.35(1)(b).

Ms. Stier's appeal was filed on June 26, 2015, when the Appeals Section received the faxed appeal.

Substantially more than ten calendar days elapsed between the mailing date of the decision and the date Ms. Stier filed her appeal. 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 weight of the evidence establishes that Ms. Stier had a reasonable opportunity to file a timely appeal by the appeal deadline, but elected not to do that in light of her new employment. Ms. Stier's election not to file an appeal by the deadline and her reconsideration of the matter a month and a half after the appeal deadline had passed do not provide good cause under the law to treat the late appeal as a timely appeal. Ms. Stier's failure to file an appeal within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2).

No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

Even if the weight of the evidence established that Ms. Stier did not receive the April 30, 2015, reference 01, decision until May 13 or 14, 2015, Ms. Stier's decision to wait more than another month to file an appeal from the decision involved unreasonable delay.

Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), Ms. Stier has failed to preserve her right to challenge the decision and the administrative law judge lacks jurisdiction to disturb the lower decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The April 30, 2015, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the April 17, 2015 discharge, remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs

