

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**REID L JOHNSON**  
Claimant

**APPEAL NO. 23A-UI-06180-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIRACLE MUSCATINE INC**  
Employer

**OC: 11/13/22  
Claimant: Respondent (1)**

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Iowa Code § 96.5-1 – Voluntary Quit  
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits  
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding  
Iowa Code § 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Employer filed an appeal from the December 7, 2022, reference 01, decision that allowed benefits. Said appeal was not in fact filed directly by employer, but an administrative law judge found an appeal in case 23A-UI-05371-CS-T. This matter was remanded for further review of the separation and timeliness issues. After due notice was issued, a hearing was held on July 10, 2023. The claimant did participate. The employer did participate through John Carlisle the new owner of Speed Clean, who was participating in the party of Miracle Muscatine. The administrative law judge took notice of the administrative records in this matter.

**ISSUES:**

Whether the appeal is timely?

Did claimant voluntarily quit with good cause attributable to employer?

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 December 7, 2022. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 17, 2022. The appeal was not filed until June 12, 2023, which is after the date noticed on the disqualification decision. Employer stated that at no time has his business operated as Miracle Muscatine. He purchased a car wash business from the previous owner (Miracle Muscatine) and started a new business (Speed Clean) on August 27, 2022. Claimant and other employees filled out new W-2's for the new owner.

The former owner and new owner operate out of the same building. The new owners forwarded all documents sent to the former owner to the former owner's bookkeeper. The decision allowing benefits was forwarded to the new owner. Claimant did not begin receiving benefits until 2023. The new owner did not find out about claimant's receipt of benefits until after receiving a quarterly Statement of Charges shortly after May 9, 2023. Employer filed the appeal on June 12, 2023. The intent of the new and former owners was for claimant to be eligible to receive benefits as per Miracle Muscatine.

The owners of Speed Clean were sent a Tax Decision on January 6, 2023. Said decision indicated that Speed Clean is responsible for all debts owed by Miracle Muscatine. Speed Clean did not appeal this decision.

Claimant did voluntarily quit work with Speed Queen on or around November 7, 2022. Claimant stated his quit was because he had some of his power removed after a change of ownership. Although claimant was working fewer hours and making more money under the new ownership, he stated that his demands of his inferior employees (claimant was the general manager) were reversed by the new owners of the different company. There was ongoing work available for claimant had he not chosen to have quit.

#### **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

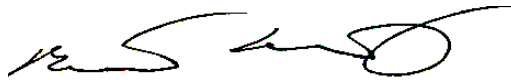
appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Appellant – successor in interest – Speed Clean made a choice not to open documents sent to the address and labeled for Miracle Muscatine although they have not shown that sale documents between the parties did not transfer debts.

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).

Even if the administrative law judge found this case as timely appealed, which it was not, the employer remains responsible for debts owed by the previous owner, as Speed Queen did not appeal the January 6, 2023 decision establishing this fact. Miracle Muscatine filed a response to the Notice of Claim stating that they did not dispute the unemployment filing of claimant. Additionally, at the time of the fact finding, employer Speed Queen participated in the fact finding along with the Miracle Muscatine owner. At that time, employer stated that they did not dispute the unemployment claim of claimant.

**DECISION:**

The December 7, 2022, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Blair A. Bennett  
Administrative Law Judge

July 11, 2023  
Decision Dated and Mailed

bab/scn

**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**

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.