

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALBERNARD CLINTON
Claimant

HOPE HAVEN INC
Employer

APPEAL 21A-UI-11674-WG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 8, 2021 (reference 01) unemployment insurance decision that found that the claimant was disqualified from receipt of benefits based upon discharge for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on July 9, 2021. However, exhibits were not properly transmitted into the file prior to the scheduled hearing. The telephonic hearing was suspended and reconvened on July 12, 2021 to complete the evidentiary record. The claimant, Albernard Clinton, participated personally and called Octavius Davis to testify. The employer, Hope Haven, Inc., participated through witnesses Tanya Nelson and Connie Pagel.

Mr. Clinton introduced Claimant's Exhibits 1 through 10¹, which are screen shots of text messages. Hope Haven introduced Employer's Exhibits 1 through 8. All exhibits offered were received into the evidentiary record.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

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

Claimant, Albernard Clinton, worked as a direct support professional providing direct care to clients of the employer. He commenced employment on October 6, 2020 and last worked for the employer on January 16, 2021. On that date, claimant was involved in an altercation with another employee. He was subsequently discharged by the employer as a result of the altercation on January 19, 2021. Claimant vehemently denies that he initiated or even participated in any fighting. He asserts that he was threatened by the other employee and that he followed the guidance of management after he reported the threats prior to the altercation.

¹ During the hearing, the undersigned erroneously referred to Claimant's Exhibits as numbered 1 through 10 at the time of hearing after also numbering the Employer's Exhibits. Any reference to exhibits will be preceded by a declaration of "Claimant's Exhibits" or "Employer's Exhibits" for this reason.

See Claimant's testimony; Claimant's Exhibits 1-10. The employer asserts that claimant's actions violated company policy and that he was discharged for misconduct. See Employer's Exhibits 2-6. However, before any facts are considered or findings made relative to the January 16, 2021 altercation or basis for discharge, it must be determined that the undersigned has jurisdiction to hear and decide the case. Specifically, it must be determined whether claimant's appeal was timely to preserve his claim.

A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on April 8, 2021. The claimant received the decision prior to the appeal deadline listed on the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 18, 2021. The undersigned took administrative notice on the record that April 18, 2021 was a Sunday, extending the deadline to appeal to April 19, 2021.

The claimant filed his appeal by fax and via an e-mail on April 20, 2021. Claimant asserted no error by the agency in its issuance or mailing of the decision. He conceded the decision was mailed to the proper address. Mr. Clinton further acknowledged receipt of the decision prior to the established deadline and asserted no error or delay caused by the United States Postal Service.

When asked why he waited until April 20, 2021 to file the appeal, Mr. Clinton's only excuse or explanation was that he did not have access to e-mail or a fax until he went to a Super 8 on April 20, 2021 to fax the appeal. Therefore, I find that claimant timely received the April 8, 2021 decision. I find that he had an opportunity to file a timely appeal but his delay caused the appeal to be filed after the appeal deadline. Ultimately, I find that the delay in filing an appeal is the result of claimant's inaction and delay and that his appeal was untimely.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the 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 appeal in this case was filed via fax and e-mail on April 20, 2021. 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal because he received the decision in the mail prior to the due date. Claimant's 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). As such, the appeal was not timely filed pursuant to Iowa Code § 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. 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).

DECISION:

The April 8, 2021 (reference 01) decision is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

A handwritten signature in cursive script, reading "William H. Grell". The signature is written in black ink and is positioned above a horizontal line.

William H. Grell
Administrative Law Judge

July 19, 2021
Decision Dated and Mailed

whg/scn