

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GREGORY D QUICK
Claimant

KWIK TRIP INC
Employer

APPEAL 20A-UI-00797-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/07/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On January 28, 2020, the claimant filed an appeal from the November 20, 2019, (reference 05) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2020. Claimant participated. Employer participated through store leader Missy Strain. Employer's Exhibits 1 and 2 were received. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 20, 2019, Iowa Workforce Development mailed a reference 05 unemployment insurance decision to claimant's last address of record. The decision warned an appeal was due by November 30, 2019. Claimant received the decision within the appeal period.

Claimant was unable to participate in the fact finding interview regarding this separation from employment because of a new job he started. Claimant called Iowa Workforce Development to ask to reschedule the fact finding interview, but was told that the agency does not reschedule fact finding interviews. Claimant assumed the same would be true for an appeal hearing. In fact, that is not the case. The administrative rules allow parties to request to reschedule an appeal hearing. Claimant did not check with anyone with Iowa Workforce Development to find out if appeal hearings could be rescheduled. Claimant did not file an appeal because he did not think he would be available for a hearing due to his new job.

In late December 2019, claimant spoke with an agency representative and learned he could submit a written statement in lieu of participation in an appeal hearing, but still did not file an appeal at that time.

Claimant was separated from his new job, and then decided to file the appeal on January 28, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 unemployment insurance 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 claimant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions 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 § 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 November 20, 2019, (reference 05) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Christine A. Louis
Administrative Law Judge
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February 18, 2020
Decision Dated and Mailed

cal/rvs