

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM A WATTS
Claimant

APPEAL NO. 22A-UI-03888-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EDWARDS-ARCHER OLDS-CADILLAC INC
Employer

OC: 05/02/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 10, 2021, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 23, 2022. The claimant did participate. The employer did participate through Ellen Sonnleitner. Both claimant and employer agreed to waive time and hold the hearing although only nine days passed between the mailing of the notice and the hearing date. The administrative law judge takes notice of the administrative record.

ISSUES:

Whether the appeal is timely?

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

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

A decision was mailed to the claimant's last known address of record on December 10, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 20, 2021. The appeal was not filed until January 31, 2022, which is after the date noticed on the disqualification decision. Claimant stated he did receive the decision. Claimant further stated that he was confused as to the separation date as it was not accurate as claimant indicated his decision stated a separation date in September. (The administrative law judge read the unemployment insurance decision into the record. Said decision indicated an April 20, 2021 separation.)

Claimant further stated that his lack of timeliness was in part due to a conversation with a claims representative who, claimant stated, was also confused as to the separation date. (A look by the administrative law judge shows that claimant contacted IWD on December 2, 2021 – a full week prior to the decisions being sent to him.) Claimant stated his confusion as to the separation date kept him from filing timely appeals.

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.

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).

DECISION:

The December 10, 2021, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Blair A. Bennett
Administrative Law Judge

March 31, 2022

Decision Dated and Mailed

bab/abd