

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASIA M GREENE
Claimant

NORDSTROM INC
Employer

APPEAL 21A-UI-12127-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On May 7, 2021, claimant, Asia M. Greene, filed an appeal from the April 9, 2021, reference 04, unemployment insurance decision that denied benefits based upon the determination that claimant quit her employment with the employer, Nordstrom, Inc., without showing good cause for having done so. The parties were properly notified about the hearing held by telephone on July 20, 2021. The claimant participated personally. The employer did not participate. Department's Exhibit D-1 was admitted to the hearing record.

ISSUE:

Is the claimant's appeal is timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on April 9, 2021. She received the decision within 10 days of the date of mailing. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 19, 2021. The appeal was not filed until May 7, 2021, which is after the date noticed on the disqualification decision.

Claimant alleged that she initially tried to appeal within the timeframe allowed for appeal. However, the appeal did not go through. She became aware that her appeal had not gone through the same day or the following day when she did not receive any confirmation email. She then called the Iowa Workforce Development office for assistance. She estimated that the call to the Iowa Workforce Development office occurred on May 7, 2021. She provided no clear explanation for why the second attempt at filing her appeal was delayed by approximately three weeks.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

Claimant initially attempted to file her appeal within the timely filing period. However, after she became aware that the appeal had not gone through, there was an unexplained delay of nearly three weeks in which claimant could have used one of a number of ways to file her appeal, but did not do so until May 7, 2021—well after the appeal deadline passed. Claimant's delay, after the initial failure of the appeal to be transmitted properly, was not due to an error or

misinformation from the Department or due to delay or other action of the United States Postal Service. No other good-cause reason has been established for the delay. Claimant's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

DECISION:

The April 9, 2021, (reference 04) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Alexis D. Rowe
Administrative Law Judge

July 28, 2021
Decision Dated and Mailed

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