

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

TOYIA K EZEOKAFOR
Claimant

APPEAL NO. 18A-UI-03143-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPPORTUNITY VILLAGE
Employer

OC: 01/28/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Toyia Ezeokafor filed an appeal from the February 22, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Ezeokafor was discharged on February 1, 2018 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on April 5, 2018. Ms. Ezeokafor participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Toyia Ezeokafor established an original claim for unemployment insurance benefits that was effective January 28, 2018. On February 22, 2018, Iowa Workforce Development mailed a copy of the February 22, 2018, reference 01, decision to Ms. Ezeokafor's last known address of record. The weight of the evidence establishes that the decision was received at the address of record in a timely manner, prior to the deadline for appeal. The decision disqualified Ms. Ezeokafor for unemployment insurance benefits. The decision stated that an appeal from the decision must be postmarked by March 4, 2018 or be received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. March 4, 2018 was a Sunday. The next working day was Monday, March 5, 2018. Ms. Ezeokafor did not look at the decision until after the appeal deadline had passed. On March 9, 2018, Ms. Ezeokafor went to the Fort Dodge Workforce Development Center to obtain assistance in filing an appeal. On that day, Ms. Ezeokafor asserted in her appeal that she had not received the February 22, 2018, reference 01, decision until she went to the Fort Dodge Workforce Development Center on March 9, 2018.

Ms. Ezeokafor has completed one semester of college in a nursing program.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

More than ten calendar days elapsed between the mailing date of the decision 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence establishes an untimely appeal. The record shows that Ms. Ezeokafor had a reasonable opportunity to file a timely appeal, but failed to file an appeal by the appeal deadline. Ms. Ezeokafor's testimony at the appeal hearing established that she is an unreliable witness. Ms. Ezeokafor provided confused, internally contradictory testimony concerning her home address. Ms. Ezeokafor had an equally difficult time testifying about relevant dates, but acknowledged that she had indeed received the February 22, 2018, reference 01, decision. This contradicted what Ms. Ezeokafor had put in her March 9, 2018 appeal. The weight of the evidence establishes that the February 22, 2018, reference 01, decision was received at Ms. Ezeokafor's address record in a timely manner, prior to the appeal deadline, but that Ms. Ezeokafor did not look at the decision or take any steps to appeal the decision until after the March 5, 2018 extended appeal deadline had passed.

There is not good cause to treat the late appeal as a timely appeal. The late filing of the appeal was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the February 22, 2018, reference 01, decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The February 22, 2018, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the February 1, 2018 discharge, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs