

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA S JUMP

Claimant

APAC CUSTOMER SERVICES INC

Employer

APPEAL NO. 15A-UI-02278-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/07/14

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 31, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 24, 2015. The claimant did participate. The employer did participate through Turkessa Newsome and Jason Morales. Claimant's Exhibit One was admitted to the 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 31, 2014. Claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 10, 2015. The appeal was not filed until February 19, 2015, which is after the date noticed on the disqualification decision.

Claimant stated that she attempted to file this matter by fax in a timely manner. Faxes did not get received by IWD. Claimant stated she tried multiple times to fax and assumed that the faxes had gone through. Eventually, over a month later, claimant decided that IWD hadn't received her appeal, and she sent the appeal as an attachment to an email.

Claimant worked in a call center. Claimant was moved to handle difficult calls as she successfully dealt with difficult clients. Claimant was found on December 5, 2014 to have dropped 25 calls from customers during one day of work.

REASONING AND CONCLUSIONS OF LAW:

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 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, subsection 10, 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 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). When an appeal is faxed in the court will look to the date of a successful faxing being completed. In this matter the claimant received no acknowledgement of sending a fax successfully.

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 court received unrefuted testimony that the delay in filing was caused by the lack of a properly working fax machine. The court has received information from numerous claimants and employers that the fax machine has not worked in a consistent and proper manner. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error. As such, the court will look at the alleged misconduct in this matter.

DECISION:

The December 31, 2014, reference 01, decision is affirmed. The appeal in this case was timely filed, but the claimant was discharged for misconduct. The decision of the representative remains in effect.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs