

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

---

**PAULA K. GARRISON**  
Claimant

**DIA CASE NO. 23IWDUI0014  
IWD APPEAL NO. 22A-UI-15096**

**KWIK TRIP, INC**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/29/22  
Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Paula K. Garrison, filed an appeal from the June 17, 2022 (Ref 01) unemployment insurance decision that denied the claimant benefits based upon her discharge from employment on May 16, 2022. The decision specified that the decision would become final unless an appeal is postmarked by June 27, 2022, ten days after the date of the decision. Garrison acknowledged receiving the Unemployment Insurance Decision from the Iowa Workforce Development (IWD) representative around June 17, 2022. She also acknowledged appealing the unfavorable decision on July 14, 2022.

After due notice was issued, a telephone conference hearing was held on September 9, 2022. The claimant, Paula K. Garrison, participated and was self-represented. The employer, Kwik Trip, Inc., was represented by Jessica Meinhart, Store Leader at the Des Moines Hubbell location of Kwik Star. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The Employer submitted Exhibits 1 through 8, which were admitted without objection into the administrative record.

**ISSUES:**

Was the appeal filed in a timely manner?

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began her employment on or about July 2, 2021. She was hired to be a full-time Guest Service Coworker. On March 24, 2022, Garrison was given a final warning for walking out on her shift and then missing the two following shifts. Garrison had another incident of not following policy regarding communications with respect to her attendance on May 2 and 3, 2022. On May 17, 2022, Meinhart met with Garrison, who did not provide a reason for not properly communicating

her absences those two days. On May 26, 2022, Richard Mendue, assistant manager of the Hubbell Store, held a conference with Garrison and terminated her employment.

Garrison filed an appeal of the IWD representative's decision dated June 17, 2022, on July 14, 2022. She testified that she received other information regarding her termination, which confused her. Garrison did not provide an explanation as to why she determined that she should file the appeal on July 14.

Meinhart confirmed the termination date for Garrison as May 26, 2022.<sup>1</sup>

#### **REASONING AND CONCLUSIONS OF LAW:**

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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.*

Iowa Code § 96.6(2) (emphasis added).

The ten calendar days for appeal begins running on the mailing date of the fact-finding representative's decision. The decision date found in the upper right-hand portion of the representative's decision is presumptive evidence of the date of mailing. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52, 55 (Iowa 1983). The record in this case shows more than ten calendar days elapsed between the mailing date (June 17, 2022) and the date this appeal was filed (July 14, 2022). Garrison's July 14, 2022, appeal was filed after the June 27, 2022 deadline. Although Garrison testified she received the decision shortly after it was issued, she acknowledged she did not appeal until July 14, 2022. Garrison's explanation for not timely filing her appeal is unconvincing.

The Iowa Supreme Court has held there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and administrative law judges have 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 Servs.*, 276 N.W.2d 373, 377 (Iowa 1979).

The issue in the above-captioned matter is whether Garrison 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). Garrison had an opportunity to file an appeal by June 27, 2022, but she waited until July 14, 2022, to appeal the representative's decision.

I find Garrison's 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

---

<sup>1</sup> The Unemployment Insurance Decision provides a discharge date of May 16, 2022, but Meinhart verified that the discharge date was May 26, 2022.

United States Postal Service pursuant to Iowa Administrative Code rule 871-24.35(2). I find the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and I lack jurisdiction to make a determination with respect to the nature of the appeal and underlying issue of whether Garrison was discharged from her employment with Kwik Trip, Inc. without good cause. See *Beardslee v. Iowa Dep't of Job Servs.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979). Benefits are not allowed.

**DECISION:**

The June 17, 2022, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are not allowed.



Alla R. Mintzer  
Administrative Law Judge  
Department of Inspections and Appeals  
Administrative Hearings Division

September 16, 2022  
Decision Dated and Mailed

ARMZ/aa

cc: Paula K. Garrison, Claimant (by first class mail)  
Kwik Trip, Inc., Employer (by first class mail)  
Joni Benson (By AEDMS)

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.

**Case Title:** PAULA K GARRISON V. KWIK TRIP, INC.  
**Case Number:** 23IWDUI0014  
**Type:** Proposed Decision

IT IS SO ORDERED.

*Alla R. Mintzer Zaprudsky*

---

Alla Mintzer-Zaprudsky, ALJ