

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GEORGIA CASNER
Claimant

APPEAL NO. 21A-UI-10251-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)A – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code §96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On April 12, 2021, the claimant, Georgia Casner, appealed the August 14, 2020, (reference 02) decision that concluded the claimant was denied benefits after a separation from employment. A telephone hearing was held at 1:00 p.m. on June 25, 2021, pursuant to due notice and was consolidated with the hearing for 21A-UI-10252-ED-T. The claimant, Georgia Casner, participated. Claimant's Exhibit was received and admitted into the record. The administrative law judge took official notice of the administrative record. Claimant updated her address of record.

ISSUE:

Was the claimant's appeal timely?
Was the claimant discharged for misconduct?
Did the claimant voluntarily quit?
Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a day care worker when she was available and during her breaks from college.

A decision that disqualified the claimant from receipt of unemployment insurance benefits was mailed to the claimant's correct address of record on August 14, 2020. The claimant received the decision prior to the appeal deadline listed on the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 24, 2020. The claimant filed her appeal on April 6, 2021.

REASONING AND CONCLUSIONS OF LAW:

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

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

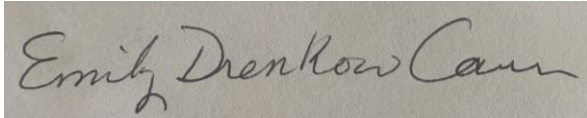
(emphasis added).

The ten calendar days for appeal begins 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The claimant did not file this appeal until months after the due date. Claimant's delay 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 (authority) to decide the other issue in this matter.

DECISION:

The August 14, 2020 (reference 01) decision is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

A rectangular box containing a handwritten signature in black ink. The signature reads "Emily Drenkow Carr" in a cursive script.

Emily Drenkow Carr
Administrative Law Judge

July 8, 2021
Decision Dated and Mailed

ed/lj