

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRYSON HAYNES

Claimant

APPEAL 21A-UI-20245-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAM EQUITIES OF CORALVILLE LLC

Employer

OC: 05/30/21

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer, Jam Equities of Dubuque LLC, filed an appeal from the August 5, 2021, reference 01, unemployment insurance decision that granted benefits based upon the conclusion he was discharged, but misconduct was not shown. The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2021 at 11:05 a.m. Prior to the start of the hearing, the parties waived defects on the hearing notice suggesting this case would be heard at the same time as 21A-UI-18637-SN-T. The cases could not be heard together because Jam Equities of Coralville has a separate tax identification number than Jam Equities of Dubuque, LLC, and so Iowa Workforce Development considers them separate entities. The claimant participated and testified. The employer participated through President Asif Poonja and Human Resources Director Shana Fazal. Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, D-1, D-2, D-3, and D-4 were received into the record. The claimant's exhibits were not admitted because they were not relevant.

ISSUES:

Whether the employer's appeal was timely? Whether there are reasonable grounds to consider the appeal otherwise timely?
Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
Whether the claimant has been overpaid benefits?
Whether the claimant has been overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A disqualification decision was mailed to employer's last known address of record on August 5, 2021. The employer did receive the decision within ten days. The decision contained a warning

that an appeal must be postmarked or received by the Appeals Section by August 15, 2021. (Exhibit D-1) The employer's various appeals were not filed until August 19, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2, Exhibit D-3, Exhibit D-4)

Ms. Fazal testified that the decision was not received by the employer prior to August 18, 2021. The employer provided a copy of an email from Personal Assistant Aleya James on August 18, 2021. (Exhibit 11) The email has attached a document labeled, "Bryson ui decision.pdf." Ms. James was not made available to testify despite being the only person who had first-hand knowledge and experience regarding the presence of the decision in the employer's mailbox. The record is clear that Ms. James was responsible for retrieving the employer's mail. Ms. Fazal testified she opted to wait until the following day, August 19, 2021 to send it because she had duties of higher importance to attend to.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer's appeal is not timely. There are not reasonable grounds to consider the employer's appeal otherwise timely. The administrative law judge does not have jurisdiction to evaluate the remaining issues.

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 issuing 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. 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 issued, 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 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 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 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. *I.* 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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds Ms. Fazal's testimony not credible regarding the date of receipt of the decision.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. It bears noting that the appellant has the burden to show that its delay was attributable to a force beyond its control which effectively would deny it the right of appeal. The appellant has not met its burden here. The appellant did not make Ms. James available to testify. The record is clear that Ms. James was responsible for retrieving the employer's mail. Instead, Ms. Fazal offered at best hearsay testimony that Ms. James checked the mail each day leading up to August 18, 2021 and did not see a decision to receive. Although hearsay testimony is permitted in administrative hearings regardless of a specific exception, it cannot be permitted to carry the employer's burden here for several common sense reasons. What does the record have for instance in terms of assuring the trier of fact that Ms. James was checking the mailbox each day? Imagine if the shoe was on the other foot here and we had claimant stating his wife diligently checked his mail daily. It is difficult to believe the employer would accept that hearsay testimony as meeting the burden.

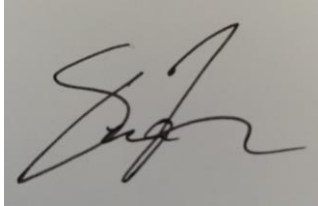
In any event, Ms. Fazal conceded that the appeal was not sent until the following day purely due to circumstances related to the employer. As a result, regardless of the credibility determination made regarding Ms. Fazal's testimony the outcome is the same.

The administrative law judge concludes that 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 United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed

pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The August 5, 2021, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

December 21, 2021
Decision Dated and Mailed

smn/mh