

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHY SIMONTON
Claimant

DGS-ACQUISITIONS LLC
Employer

APPEAL 19A-UI-09060-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/18/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – VQ – Voluntary quitting
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the September 6, 2019 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 11, 2019, at 9:00 a.m. Claimant participated. Employer participated through Chris Mathias, Store Director. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 4343 Merle Hay Road, Des Moines, Iowa on September 6, 2019. That was claimant's correct address that date. Claimant does not know when she received the decision but typically receives mail from Des Moines, Iowa in two to three days. Claimant has no reason to believe that was not the case for the decision.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by September 16, 2019. Claimant did not appeal the decision and had no intention of appealing the decision. Claimant appealed a decision in an unrelated case; Iowa Workforce Development considered it as an appeal of all adverse decisions. Claimant's appeal was postmarked November 12, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the appeal was untimely.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.

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 appeal in this matter was not timely; therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The September 6, 2019 (reference 02) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

acw/scn