

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NICHOLE L SHERER**  
Claimant

**BRIDGE DAVENPORT LP**  
Employer

**APPEAL 21A-UI-00311-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 08/30/20**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Employer filed an appeal from the November 18, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 2, 2021, at 2:00 p.m. Claimant participated with her attorney Michael McCarthy. Employer participated through Miranda Lewis, Community Director. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether employer filed a timely appeal.  
Whether claimant's separation was a discharge for disqualifying job-related misconduct.  
Whether claimant was overpaid benefits.  
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

**FINDINGS OF FACT:**

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

Employer uses an agent to process its unemployment insurance claims. The Unemployment Insurance Decision was mailed to the employer's agent at the correct address on November 18, 2020. It is unknown when the agent received the decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by November 28, 2020. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. November 28, 2020 was a Saturday; therefore, the deadline was extended to Monday, November 30, 2020.

Employer received the decision from its agent on December 3, 2020. Employer's agent appealed the decision via facsimile on December 7, 2020. The appeal was received by Iowa

Workforce Development on December 7, 2020. Employer provided no reason for its delay in submitting its appeal.

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

For the reasons that follow, the administrative law judge concludes that employer's 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) 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 of 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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).

Employer's agent submitted employer's appeal more than a week after the deadline had passed. It is unknown when employer's agent received the decision or the reason for employer's delay in submitting its appeal. Employer has not established that its delay in submitting its appeal was due to any agency error or misinformation or delay of the United States Postal Service. Employer's appeal was not timely.

Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

Employer's appeal was not timely. The November 18, 2020 (reference 01) unemployment insurance decision is affirmed. The administrative law judge has no authority to change the decision of the representative.



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March 9, 2021  
Decision Dated and Mailed

acw/kmj