

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES WILLIAMS
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 21A-UI-19485-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/13/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for misconduct
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Charles Williams, filed an appeal on September 2, 2021 from the August 19, 2021, (reference 01) unemployment insurance decision that concluded they were not eligible for unemployment insurance benefits due to their voluntary quit on October 27, 2020. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for October 26 2021. The claimant participated. The employer, Advance Services Inc, participated through Melissa Lewien. Judicial notice was taken of the administrative file. Employer's Exhibits 1 and 2 were received over Claimant's objection as noted on the record.

ISSUES:

Is claimant's appeal timely?

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

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on August 19, 2021. The appeal deadline is listed as August 29, 2021. The appeal was submitted September 2, 2021. Appellant received the decision, and at first doesn't recall exactly when he received it or how many days he waited to submit his appeal. Then appellant stated he filed the appeal the same day he got the decision. Then appellant advises he waited three or four days to file and went to a workforce development station for help and was advised to go ahead and electronically submit his appeal, even though it was late, and see what happens. Claimant's last version, which undersigned takes as the most credible, is claimant/appellant timely received the decision, waited at least three or four days before submitting his then late appeal. Claimant provided no explanation as to why his appeal was late with his appeal itself (which he acknowledged was late when he filed), nor during the hearing.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not.

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).

Appellant timely received the decision in the mail and therefore had an opportunity to file an appeal prior to the appeal deadline. Appellant'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 19, 2021, (reference 01) unemployment insurance decision is **AFFIRMED**. The appeal in this case was not timely, and the decision of the representative remains in effect.



Darrin T. Hamilton
Administrative Law Judge

November 9, 2021
Decision Dated and Mailed

dh/scn