

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLE J RUDEN
Claimant

APPEAL NO. 19A-UI-07141-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOORMAN ENTERPRISES INC
Employer

OC: 08/04/19
Claimant: Appellant (1)

Iowa Code Section 95.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Nichole Ruden filed an appeal from the August 27, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Ruden was discharged on July 30, 2019 for excessive unexcused absences. After due notice was issued, a hearing was held on October 2, 2019. Ms. Ruden participated. Patty Moorman represented the employer. Exhibits A, B and C were received into evidence.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 27, 2019, Iowa Workforce Development mailed a copy of the August 27, 2019, reference 01, decision to claimant Nichole Ruden at her last-known address of record. The address of record was in Boone. The decision disqualified Ms. Ruden for benefits, based on the deputy's conclusion that Ms. Ruden was discharged on July 30, 2019 for excessive unexcused absences. The decision stated that an appeal from the decision must be postmarked by September 6, 2019 or be received by the Appeal Section by that date. Ms. Ruden completed an appeal form on September 3, 2019. Ms. Ruden mailed her appeal from the Ames post office. The appeal envelope bears a September 7, 2019, 2 p.m. postmark. Ms. Ruden asserts she mailed the appeal on the morning of Thursday, September 5, 2019.

REASONING AND CONCLUSIONS OF LAW:

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 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 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 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 section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

Ms. Ruden's mailed appeal was filed on September 7, 2019, the postmark date on the envelope in which the appeal was mailed. The evidence in the record establishes 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). The record shows that Ms. Ruden did have a reasonable opportunity to file a timely appeal.

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 Ct. 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. *Id.* 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.*

The administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was attributable to Ms. Ruden's delayed action on the matter and not due to Iowa Workforce Development or to the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). The administrative law judge found not credible or reliable Ms. Ruden's assertion that she had mailed the appeal at the Ames post office on the morning of Thursday, September 5, 2019. If that had happened, a reasonable person would expect the mail to be collected and postmarked that same day pursuant to the post office's normal operations. Under exceptional circumstances, like high-volume mail days around the Christmas holiday, it is plausible that the mail deposited on one day might be postmarked the next. But there is no reason to believe that September 5, 2019 was a high-volume mail day. The administrative law judge finds highly implausible Ms. Ruden's assertion that the Ames post office received a piece of deposited mail on the morning of Thursday, September 5, 2019 and delayed postmarking that mail until the afternoon of Saturday, September 7, 2019. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the August 27, 2019, reference 01, decision that disqualified Ms. Ruden for benefits and that relieved the employer's account of liability for benefits. 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 27, 2019, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on July 30, 2019 for excessive unexcused absences, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs