

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PETER A HALL
Claimant

APPEAL NO. 22A-UI-02453-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CPC PARTS DELIVERY LLC
Employer

OC: 05/09/21
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

The claimant, Peter Hall, filed a late appeal from the August 6, 2021, reference 01, decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on May 10, 2021 for excessive unexcused absences and tardiness after being warned. After due notice was issued, a hearing was held on February 21, 2022. Claimant participated. Richard Jones represented the employer and presented testimony through Lance Burnett. There were three appeal numbers set for a consolidated hearing: 22A-UI-02453-JTT, 22A-UI-02454-JTT and 22A-UI-02455-JTT. Exhibits A, 1 through 28 and 33 through 40 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX reference 01, 02 and 03 decisions.

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:

The claimant established an original claim for benefits that was effective May 9, 2021.

On August 5, 2021, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed the claimant's May 10, 2021 discharge from employment with CPC Parts Delivery, L.L.C. The claimant participated in the fact-finding interview. The deputy told the claimant to expect a decision in the mail.

On August 6, 2021, Iowa Workforce Development mailed the August 6, 2021, reference 01 decision to the claimant's Silvis, Illinois last-known address of record. The reference 01 decision disqualified the claimant for benefits and held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on May 10, 2021 for excessive unexcused absences and tardiness after being warned. The reference 01

decision stated the decision would become final unless an appeal was postmarked by August 16, 2021 or was received by the Appeals Section by that date.

The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal. The claimant asserts he did not receive the August 6, 2021, reference 01, decision when it was mailed to him. Though the deputy had told the claimant to expect a decision in the mail, the claimant asserts it did not occur to him that he should inquire about the decision. Until August 2, 2021, the claimant made weekly claims and Iowa Workforce Development issued weekly \$531.00 benefit payments. This pattern continued for a two-month period. The benefit payments stopped after IWD's August 2, 2021 payment for the week that ended July 31, 2021. The benefits stopped when the deputy locked the claim in connection with the August 5, 2021 fact-finding interview and issuance of the August 6, 2021, reference 01, disqualification decision. The claimant made a weekly claim for the week that ended August 7, 2021, but received no benefits for that week. The claimant then discontinued making weekly claims. The circumstances make clear that the claimant was aware close in time to the issuance of the August 6, 2021, reference 01, decision that he had been disqualified for benefits. The surrounding circumstances, and the claimant's decision not to further inquire about the reason benefits had stopped, indicate the claimant received the reference 01 disqualification in a timely manner. The claimant did not take steps to file an appeal from the reference 01 decision by the appeal deadline or any point prior to January 4, 2022.

On December 28, 2021, Iowa Workforce Development mailed two overpayment decisions to the claimant's Silvis, Illinois address of record. The reference 02 decision stated the claimant was overpaid \$5,841.00 in regular state benefits for 11 weeks between May 16, 2021 and July 31, 2021, due to the earlier (reference 01) decision that disqualified the claimant in connection with a determination that the claimant was discharged for misconduct from employment with CDC Parts Delivery, L.L.C. The reference 03 decision held the claimant was overpaid \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for four weeks between May 16, 2021 and June 12, 2021, due to the reference 01 regarding the discharge from CPC Parts Delivery, L.L.C. Each overpayment decision stated that the decision would become final unless an appeal was postmarked by January 7, 2022 or was received by the Appeals Section by that date.

On January 4, 2021, the claimant wrote an appeal from the reference 02 overpayment decision. The claimant did not specifically reference the reference 01 decision, but stated "The disqualification for misconduct was an unfair act made by the employer due to several employee[s] not being disciplined for the same misconduct with even more severe tardies." The appeal letter further provided, "The reason for my termination was an unfair act and I feel I should not be responsible for unemployment benefits overpayment in this decision."

The Appeals Bureau received the mailed appeal on January 7, 2022 and treated it also a timely appeal from the reference 03 overpayment decision and a late appeal from the reference 01 disqualification decision.

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).

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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

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 evidence in the record establishes an untimely appeal. The evidence establishes that the claimant received the reference 01 disqualification decision in a timely manner, had a reasonable opportunity to file an appeal by the appeal deadline, but unreasonably delayed filing the appeal to June 4, 2021. The claimant assertion that he he did not receive the August 6, 2021, reference 01, decision when it was mailed to him is simply not credible. The notion that the claimant would participate in a fact-finding interview, go to make his next weekly claim and suddenly be denied benefits after an established pattern of receiving weekly benefits, discontinue his weekly claims, and then make no further inquiry, all in purported ignorance of the disqualification decision, defies logic and common sense. The circumstances make clear that the claimant was aware close in time to the issuance of the August 6, 2021, reference 01, decision that he had been disqualified for benefits and indicate the claimant received the reference 01 disqualification in a timely manner. The claimant made additional assertions in the hearing that further undermined his credibility. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the disqualification decision from which the claimant appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the August 6, 2021, reference 01, decision was untimely. The decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant was discharged on May 10, 2021 for excessive unexcused absences and tardiness after being warned, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored, slightly textured background.

James E. Timberland
Administrative Law Judge

March 11, 2022
Decision Dated and Mailed

jet/mh