

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROGER DRISCOLL
Claimant

CITY OF DUBUQUE
Employer

APPEAL 22A-UI-03167-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/05/21
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer, City of Dubuque, filed an appeal from the January 4, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that claimant was laid off due to lack of work. The parties were properly notified of the hearing. A telephone hearing was held on March 2, 2022. The claimant, Roger Driscoll, participated personally. The employer participated through Kecia Dougherty. Employer’s Exhibit 1 was admitted. Department’s Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the employer’s appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the employer's last known address of record on January 4, 2022. The employer received the decision within ten days, on approximately January 13, 2022. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 14, 2022. The appeal was not filed until January 15, 2022, which is after the date noticed on the disqualification decision. The employer explained that the decision was not forwarded to Dougherty, who completed the appeal, until January 14, 2022, and she did not read it closely enough to know that an appeal was due that day. She submitted the appeal the following day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer’s appeal is untimely.

Iowa Code section 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, the employer received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. The employer'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. The employer's appeal was not filed on time and the administrative law judge lacks jurisdiction to decide the other issue in this matter.

DECISION:

The January 4, 2022, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Alexis D. Rowe
Administrative Law Judge

March 17, 2022
Decision Dated and Mailed

ar/kmj