

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DANIEL L HOFF
803 N 35TH ST APT 22
COUNCIL BLUFFS, IA 51501-0684**

**BACKLUND PLUMBING
6215 GROVER ST
OMAHA, NE 68106**

**DIA APPEAL NO. 21IWDUI0144
IWD APPEAL NO. 20A-UI-10644**

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>

Claimant Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>

Handbook for Employers: <http://www.iowaworkforce.org/ui/uiemployers.htm>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate through the Skilled Iowa Initiative: <http://skillediowa.org/>

Becoming a member employer through Skilled Iowa and utilizing internships: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL L HOFF

Claimant

BACKLUND PLUMBING

Employer

DIA APPEAL NO. 21IWDUI0144

IWD APPEAL NO. 20A-UI-10644

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC:5/3/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Daniel Hoff, claimant, filed an appeal from an August 19, 2020, unemployment insurance decision that denied unemployment benefits because Hoff voluntarily quit his job by failing to report to work three days in a row.

A telephone hearing was held October 8, 2020. The parties were properly notified of the hearing via a Notice of Telephone Hearing sent to both parties at the above-listed addresses on September 23, 2020. Hoff participated and was self-represented. Kim Roseland, human resources, represented Backlund Plumbing. Neither party submitted exhibits.

ISSUE:

Was the appeal filed in a timely manner?

FINDINGS OF FACT:

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

Daniel Hoff was a full-time drain technician for Backlund Plumbing (Backlund). He worked his regular shift on Friday, May 1, 2020. He was on call the weekend of May 2, which required him to respond to calls dispatched to him. Hoff received a call Friday evening. He attempted to call the customer before driving to the job. The customer did not answer, so he did not drive to the job. Hoff did not receive phone calls from Backlund dispatch on Saturday or Sunday. When Hoff arrived at work on Monday, his direct supervisor, Shawn, terminated his employment for not showing up for the May 1 job and not communicating with Backlund employees on Saturday and Sunday. (Hoff testimony; Roseland testimony.)

Hoff did not complete a written questionnaire from Iowa Workforce Development after he applied for unemployment insurance benefits, and he did not participate in the factfinding interview with

an Iowa Workforce Development representative. Roseland provided information to the Iowa Workforce Development representative regarding Hoff's employment. Iowa Workforce Development's factfinding decision was issued August 19, 2020, and was sent to the above-listed address for Hoff. The factfinding decision contains the following information: "This decision becomes final unless an appeal is postmarked by 8/29/20, or received by Iowa Workforce Development Appeal Section by that date. If this date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next work day."

Hoff appealed the August 19 factfinding decision on Thursday, September 3. Hoff stayed with his mother at another address in Council Bluffs in mid-August and did not receive the factfinding decision until September 3. Hoff continued to receive mail at 803 N 35th Street, Apartment 22 while he was staying with his mother, and he currently receives mail at this address. (Hoff testimony.)

REASONING AND CONCLUSIONS OF LAW:

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
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.

Iowa Code § 96.26(2) (emphasis added).

The ten calendar days for appeal begins running on the mailing date of the factfinding representative's decision. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, (Iowa 1976). The record in this case shows more than ten calendar days elapsed between the mailing date (August 19) and the date this appeal was filed (September 3). The tenth day fell on a weekend and extended the appeal deadline to August 31. Hoff's September 3 appeal was filed after this date.

The Iowa Supreme Court has held there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and administrative law judges have 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).

The only issue in the above-captioned matter is whether Hoff was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows Hoff did have a reasonable opportunity to file a timely appeal. While Hoff may

have been staying with his mother at another address when the representative's decision was mailed on August 19, Hoff did not provide credible evidence that he was unable to get mail from his address or that he forwarded mail to his mother's address. Rather, Hoff testified he received the decision at his mailing address but was delayed in getting his mail because he was staying with his mother. I find Hoff's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code rule 871-24.35(2). I find the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and I lack jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979). Benefits are not allowed.

DECISION:

The August 19, 2020, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are not allowed.



Laura Jontz
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

October 14, 2020

Decision Dated and Mailed

LRJ:lb

CC: Daniel Hoff (by first class mail)
Backlund Plumbing (by first class mail)
Nicole Merrill (email)
Joni Benson (email)

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.