

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ASHLEY A BAYLARK**  
Claimant

**BLACKHAWK SERVICES CORP**  
Employer

**APPEAL 21A-UI-10564-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 01/31/21**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.4(3) – Able to and Available for work  
Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Admin. Code r. 871-24.35 – Filing

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the March 30, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 30, 2021, at 3:00 p.m. Claimant participated. Employer participated through Laurey Gray, Human Resources Manager. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant filed a timely appeal.  
Whether claimant's separation was a discharge for disqualifying job-related misconduct.  
Whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at her address of record on March 30, 2021. Claimant did not receive the decision because she was no longer living at her address of record. Claimant moved from her address of record during the second week in March 2021. Claimant did not update her address with Iowa Workforce Development. Claimant did contact the post office to have her mail forwarded to her new address.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by April 9, 2021. Claimant contacted Iowa Workforce Development on April 15, 2021 and was informed of the disqualifying decision. Claimant filed an appeal online on April 15, 2021. Claimant's appeal was received by Iowa Workforce Development on April 15, 2021.

Claimant filed weekly claims for the weeks ending March 27, 2021, April 3, 2021 and April 10, 2021. Claimant did not receive a benefit payment for any of those weeks, because her claim was locked due to the disqualifying decision issued March 30, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's appeal was untimely.

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). 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).

Claimant did not receive the decision prior to the deadline because she did not update her mailing address with Iowa Workforce Development or have her mail forwarded by the United States Postal Service. Claimant first had notice of the adverse decision when she did not receive a benefit payment for the week ending March 27, 2021. Claimant did not file her appeal until April 15, 2021. Claimant's delay between notice of the adverse decision and filing

her appeal was not due to agency error or misinformation or delay of the United States Postal Service. Claimant's delay was due to her decision not to update her mailing address, have her mail forwarded or inquire into the lack of a benefit payment. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

**DECISION:**

Claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The March 30, 2021 (reference 01) unemployment insurance decision is affirmed.



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Adrienne C. Williamson  
Administrative Law Judge  
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July 14, 2021  
Decision Dated and Mailed

acw/kmj