

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER L COFFER
Claimant

APPEAL 17A-UI-12398-JP

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREMIER ESTATES 511 LLC
Employer

**OC: 10/15/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 15, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on March 20, 2018 at 3420 University Avenue, Suite A, in Waterloo, Iowa. Claimant participated in person. In claimant's appeal letter, she requested a Spanish interpreter; however, at the hearing claimant informed the Administrative Law Judge that she did not need a Spanish interpreter and participated in the hearing without an interpreter. The employer was not present at the start of the hearing. The employer did not request to participate by telephone prior to the hearing. The employer did not register any witnesses to participate by telephone prior to the hearing. During the hearing, the employer registered three witnesses to participate by telephone. The employer's witnesses were then contacted by telephone during the hearing. The employer requested to participate via telephone and not have any witness or a representative present in the in-person room for the hearing. Pursuant to Iowa Administrative Code rule 871-26.6(4), the employer was allowed to participate via telephone with no representative present in the in-person room. The employer participated, via telephone, through director of nursing (DON) Heidi Gearhart, human resources employee Heather Dolf, and administrator Blair Boynton.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An ineligibility unemployment insurance decision was mailed to claimant's last known address of record on November 15, 2017. Claimant received the decision, but she is not sure when she received the decision. Claimant read the decision after she received it. Claimant has been at her address of record for approximately three years. Claimant testified it takes approximately a week to get mail from Des Moines, Iowa to address of record. Claimant testified she is not aware of any issues with her mail around this time period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 25, 2017.

The appeal was not filed until December 4, 2017, which is after the date noticed on the unemployment insurance decision.

Claimant missed the fact-finding interview in November 2017. After claimant missed the fact-finding interview, she spoke to an employee at Iowa Workforce Development (IWD) and they instructed her that she had been denied benefits and she had to file an appeal. Claimant testified she attempted to file an appeal on her phone, but it did not go through successfully. Claimant did not receive a confirmation notice. Claimant then re-filed her appeal on December 4, 2017 and she received a confirmation notice.

REASONING AND CONCLUSIONS OF LAW:

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

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 calendar days for appeal begins running on the mailing date. 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. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows 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 unemployment insurance 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). 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. 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 that the appellant did have a reasonable opportunity to file a timely appeal. Claimant did not present sufficient evidence that she attempted to file an appeal on or before November 25, 2017 (the appeal deadline). Claimant did not receive a confirmation notice that this attempt was successful. Claimant is responsible for ensuring that when she does file an appeal, it is received successfully. Claimant filed her appeal on December 4, 2017, which is past the appeal deadline. It is noted that claimant credibly testified she received a confirmation notice when she filed her December 4, 2017 appeal. The administrative law judge concludes that failure to follow the clear written instructions 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 r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks 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) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The November 15, 2017, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs