LISANAKIVA JOHNSON Claimant **WHIRLPOOL CORPORATION** Employer	**APPEAL 20A-UI-06794-AW-T** **ADMINISTRATIVE LAW JUDGE** **DECISION** **OC: 09/01/19** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
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 October 4, 2019 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 28, 2020, at 11:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.
Whether claimant filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on October 4, 2019. Claimant does not recall when the decision was received. Mail from Des Moines, Iowa is typically received in Cedar Rapids, Iowa in two to three days. Claimant has no reason to believe that was not the case for the decision mailed on October 4, 2019.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 14, 2019. Claimant appealed the decision online on June 18, 2020. The appeal was received by Iowa Workforce Development on June 18, 2020. Claimant did not appeal the decision prior to the deadline because she found other employment and did not believe the appeal was necessary.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that 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 Date 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).

Claimant received the decision prior to the appeal deadline. Claimant did not file her appeal prior to the deadline because she did not believe it was necessary as she had secured other employment. Claimant's delay in submitting her appeal was not due to any agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

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. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

Claimant's appeal was not timely. The October 4, 2019 (reference 02) unemployment insurance decision is affirmed. The administrative law judge has no authority to change the decision of the representative.

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Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
1000 East Grand Avenue
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Fax (515)478-3528

August 3, 2020_____
Decision Dated and Mailed

acw/scn