

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**TRISHIA J KING**  
Claimant

**APPEAL NO. 19A-UI-05233-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY MEDICAL CENTER**  
Employer

**OC: 03/31/19**  
**Claimant: Appellant (1)**

Iowa Code Section 95.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Trishia King filed an appeal from the April 24, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. King was discharged on April 2, 2019 for violation of a known company rule. After due notice was issued, a hearing was held on July 24, 2019. Ms. King participated. Amanda Felton represented the employer. Exhibits A and B and Department Exhibit D-1 were received into evidence.

**ISSUES:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 24, 2019, Iowa Workforce Development mailed the April 24, 2019, reference 01, decision to claimant Trishia King at her last known address of record. The decision was mailed from Des Moines. The address of record was in Cedar Rapids. The decision arrived at the locked mailbox associated with the address of record in a timely manner, probably within a day or two of the mailing date. The decision disqualified Ms. King for benefits. The decision stated that an appeal from the decision must be postmarked by May 4, 2019 or be received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. May 4, 2019 was a Saturday and the next working day was Monday, May 6, 2019. Ms. King's address of record as of April 24, 2019 was an apartment she shared with her boyfriend. Though Ms. King's name was included on the lease, her boyfriend maintained possession of the key to the mailbox. The April 24, 2019, reference 01, decision remained in the locked mailbox for several weeks. During that time, Ms. King took no steps to gain access to the mailbox. Ms. King indicates that she suffered a miscarriage at some point between April 13, 2019 and May 13, 2019, but cannot recall the date. Ms. King was not hospitalized in connection with the miscarriage.

As of May 15, 2019, Ms. King and her boyfriend were preparing to move to a mobile home in Cedar Rapids and were fixing up that property in anticipation of residing there. Effective June 1, 2019, Ms. King and her boyfriend began residing at the new residence. Once Ms. King and her boyfriend began residing at the new residence, their accumulated mail from the mailbox at the old address was somehow forwarded to the new address. Ms. King reviewed the April 24, 2019 decision sometime between June 10 and 15, 2019. Ms. King saw that the decision disqualified her for benefits. Ms. King did not read far enough into the decision to see that the appeal deadline set forth on the decision was May 4, 2019.

After Ms. King reviewed the April 24, 2019 decision, she waited until June 28, 2019 to take steps to appeal the decision. On that day, Ms. King went to the Cedar Rapids IowaWORKS center, completed an appeal form, and delivered the appeal form to a Workforce Development representative. The Cedar Rapids IowaWORKS staff immediately forwarded the appeal by email attachment to the Appeals Bureau. The Appeals Bureau received the appeal on June 28, 2019.

Ms. King cites an abusive relationship with her boyfriend as another factor in the delay in filing her appeal from the April 24, 2019, reference 01, decision. Ms. King references June 26, 2019 as the day she contacted police regarding her boyfriend and the date her boyfriend became incarcerated. Ms. King and the boyfriend have since parted ways.

#### **REASONING AND CONCLUSIONS OF LAW:**

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

Ms. King's appeal was filed on June 28, 2019, when she delivered the completed appeal to the Workforce Development representative at the Cedar Rapids office for forwarding to the Appeals Bureau.

The evidence in the record establishes that more than ten calendar days elapsed between the April 24, 2019 mailing date of the decision and the June 28, 2019 appeal. Indeed, the delay in filing the appeal exceeded two months. 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 first 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). The record shows that Ms. King may or may not have had a reasonable opportunity to file a timely appeal by the May 6, 2019 extended deadline in light of the locked mailbox, the dynamics of her domestic relationship, and/or her recovery from the miscarriage.

However, the evidence also shows unreasonable delay in filing the appeal. An appeal will not be considered timely if the delay in filing the appeal was unreasonable under the circumstances of the case. See Iowa Administrative Code rule 871-24.35(2)(c). It was unreasonable for Ms. King to go several weeks without taking any reasonable steps to access her mail in the locked mailbox. It was unreasonable for Ms. King to delay taking action on the matter of her mail at a time when she had time and energy to expend two-weeks' effort on reconditioning the new residence prior to the June 1 move. It was unreasonable for Ms. King to delay filing the appeal for an extended period following her review of the decision. Ms. King indicated through her testimony that the delay between reviewing the decision and filing the appeal was, at minimum, 13 to 18 days, which would be well beyond the 10-day appeal deadline set forth in the statute. The miscarriage in April or in the first half of May would not provide a reasonable basis for delaying the appeal until June 28. The domestic relationship issues described by Ms. King would also not provide a reasonable basis for waiting all the way to June 28 to file an appeal from the April 24 decision.

The appeal was untimely. The untimeliness of the appeal was attributable to Ms. King's decision to delay action on the matter and was not attributable to Iowa Workforce Development or to the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the April 24, 2019, reference 01, decision that disqualified Ms. King for benefits and that relieved the employer of charges for benefits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The claimant's appeal was untimely. The April 24, 2019, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on April 2, 2019 for violation of a known company rule. remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs