

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHARMAKE M ABDI**  
Claimant

**LINN COUNTY HUMAN RESOURCES DEPT**  
Employer

**APPEAL 20A-UI-13367-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Sharmake M Adbi, the claimant/appellant, filed an appeal from the August 18, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 23, 2020. The claimant participated and testified. The employer participated did not participate. Official notice was taken of the administrative record.

**ISSUE:**

Was the claimant's appeal filed on time?  
Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on August 18 2020. The decision states that it becomes final unless an appeal August 28, 2020. Claimant received the decision but doesn't remember when he received the decision. Claimant forgot to file the appeal on time. When claimant remembered, he appealed the decision via email on October 27, 2020. The appeal was received by Iowa Workforce Development on October 27, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that claimant's appeal was not filed on time.

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).

In this case, the notice provision of the decision was valid. The claimant received the decision but forgot to appeal before the appeal deadline. The claimant's delay was not due to division error or misinformation or to delay or other action of the United States postal service. The claimant's appeal was not filed on time. 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 filed on time. The August 18, 2020 (reference 01) unemployment insurance decision is affirmed. The administrative law judge has no authority to change the decision of the representative.



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Daniel Zeno  
Administrative Law Judge

January 13, 2021  
Decision Dated and Mailed

dz/mh