

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMRA K WAYMAN
Claimant

APPEAL 20A-UI-09806-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AFFINITY CREDIT UNION
Employer

**OC: 05/24/20
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer/appellant, Affinity Credit Union, filed an appeal from the July 29, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 30, 2020. The claimant participated personally. The employer participated through Heidi Shaw, CEO. Lindsay Taylor, operations and risk manager, attended but did not testify.

The administrative law judge took official notice of the administrative records. Department Exhibit 1 (Appeal letter) was admitted. Employer Exhibit A was also admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An initial unemployment insurance decision (Reference 01) resulting in an allowance of benefits was mailed to the employer's last known address of record on July 29, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 8, 2020. Because August 8, 2020 was a Saturday, the final day to appeal was extended to August 10, 2020.

The employer's address of record is in care of its third party administrator, Talx UCM Services at PO Box 283, St. Louis, Missouri 63166. The employer stated once Talx receives mail for the

company, that Talx then contacts the employer's human resources' administrator, Oasis AHR. Oasis AHR then communicates with the employer to determine what steps will be taken or information is needed.

Employer stated it learned claimant had been receiving unemployment insurance benefits (and therefore had been awarded benefits) while "investigating accounts for fraudulent activity" and seeing that deposits had been made into her personal account (associated with Affinity Credit Union) from Iowa Workforce Development. Employer representative, Jim Dean, then notified Oasis HR that the claimant was receiving benefits, and it was confirmed by IWD. Employer and its representative at Oasis HR were in discussion about the initial decision on August 4, 2020.

Employer's appeal was filed by fax by Mr. Davis on behalf of the employer on August 11, 2020 (Department Exhibit D-1), which is after the prescribed period to appeal.

No evidence was presented that Talx UCM Services did not receive the initial decision due to postal error, or that the employer's delay in filing was due to Agency error. No representative from Talx participated in the hearing. Mitchell Davis, Oasis AHR representative, who filed the appeal for employer, did not participate.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United

States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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 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. 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. Further, the employer was on constructive notice about the unfavorable decision by its "investigating" the claimant's account and discovering the IWD deposits made to her account.

Employer chooses to use a three-step process to handle its unemployment matters, which includes mailing to Talx UCM Services, who then contacts a human resources company on behalf of the employer, who then contacts the employer representative. While the employer representative may not have personally received a physical copy of the initial decision, there is no evidence that Talx did not receive the decision, or that the issue was a postal service error. (Notably missing from the hearing was either a representative from Talx, who could have confirmed whether or not the initial decision was received to the address of record, or Mr. Davis, from Oasis AHR, who actually filed the appeal for the employer.)

Based upon the evidence presented, the administrative law judge concludes that employer's 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 July 29, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Jennifer L. Beckman
Administrative Law Judge
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October 1, 2020
Decision Dated and Mailed

jlb/scn