

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MARCELLINE NAHOZA**  
Claimant

**APPEAL NO. 18A-UI-11113-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 10/14/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Marcelline Nahoza filed an appeal from the October 30, 2018, reference 01, decision that disqualified her for unemployment insurance benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Nahoza was discharged on October 11, 2018 for conduct not in the best of the employer. After due notice was issued, a hearing was held on November 29, 2018. Ms. Nahoza participated. Nancy Jacobs represented the employer. Kirundi-English interpreters Karelezi Harelamena and Norbert Kaneyineza of CTS Language Link assisted with the hearing. Exhibit A and B were received into evidence. The administrative law judge took official notice of the October 30, 2018, reference 01, decision and the October 31, 2018, reference 02, decision.

**ISSUES:**

Whether there is good cause to treat Ms. Nahoza's late appeal from the October 30, 2018, reference 01, decision as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Marcelline Nahoza established an original claim for benefits that was effective October 14, 2018. Ms. Nahoza's native language is Kirundi. Ms. Nahoza has very limited English language skills and does not read English. Ms. Nahoza has an adult child who is bilingual and who was available to translate English language documents for Ms. Nahoza. On October 30, 2018, Iowa Workforce Development mailed a copy of the October 30, 2018, reference 01, decision to Ms. Nahoza at her last-known address of record. Ms. Nahoza received the decision at her Cedar Rapids home on October 31, 2018. Ms. Nahoza's bilingual adult child promptly read the decision to Ms. Nahoza. The reference 01 decision disqualified Ms. Nahoza for unemployment insurance benefits, based on the deputy's conclusion that Ms. Nahoza was discharged on October 11, 2018 for conduct not in the best of the employer. The decision stated that an appeal from the decision must be postmarked by November 9, 2018 or be received by the Appeal Section by that date. The decision provided a customer service number Ms. Nahoza, or

someone on her behalf, could call if she had questions about the decision. The back of the decision set forth instructions in English for filing an appeal and contained contact information for the Appeals Bureau.

On October 31, 2018, Iowa Workforce Development mailed Ms. Nahoza an October 31, 2018, reference 02, decision that allowed benefits to her effective October 14, 2018, provided she was otherwise eligible, based on the deputy's conclusion that Ms. Nahoza was available for work within the meaning of the law.

Ms. Nahoza did not take steps to file an appeal from the October 30, 2018, reference 01, disqualification decision by the November 9, 2018 appeal deadline. Ms. Nahoza and her bilingual adult child erroneously assumed that the October 31, 2018, reference 02, decision made it unnecessary for Ms. Nahoza to appeal from the reference 01 disqualification decision.

On November 13, 2018, Ms. Nahoza went to the Cedar Rapids IowaWORKS office to inquire about the status of her unemployment insurance claim. During that contact, Ms. Nahoza completed an appeal form. Ms. Nahoza delivered the completed appeal form to an IowaWORKS employee, who forwarded the appeal to the Appeals Bureau as an email attachment. The Appeals Bureau received the appeal on November 13, 2018.

#### **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).

The evidence in the record establishes 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. 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 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 evidence in the record establishes an untimely appeal. The evidence in the record establishes that Ms. Nahoza received the October 30, 2018, reference 01, decision in a timely manner on October 31, 2018. At that point, Ms. Nahoza had nine days in which to file an appeal by the November 9, 2018 appeal deadline. Ms. Nahoza elected to defer action on the matter until November 13, 2018, at which time she went to her local Workforce Development office and completed an appeal form. Despite the language barrier, Ms. Nahoza had a reasonable opportunity to file an appeal by the November 9, 2018 appeal deadline. At all relevant times, Ms. Nahoza had the assistance of her adult bilingual child. Ms. Nahoza unreasonably delayed action on the matter until four days after the appeal deadline had passed. Because the late filing of the appeal was attributable to Ms. Nahoza's decision to delay action, rather than attributable to Iowa Workforce Development or the United States Postal Services, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lack jurisdiction to disturb the October 30, 2018, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The October 30, 2018, reference 01, decision is affirmed. The claimant's appeal was untimely. The 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 October 11, 2018 for conduct not in the best of the employer, remains in effect.

In the event this decision regarding timeliness is reversed on appeal, there is sufficient evidence in the record for entry of a decision on the merits without need for further hearing.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs