

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEFANIE E SILVA
Claimant

MONARCH INVESTMENTS LLC
Employer

APPEAL NO. 20A-UI-05562-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from the May 27, 2020, reference 01, decision that granted benefits. After due notice was issued, a hearing was held on July 10, 2020. The claimant did participate. The employer did participate through hearing representative Malia Maples and witness Paige Frye.

ISSUES:

Whether the appeal is timely?

Whether claimant was discharged for misconduct?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on May 27, 2020. Claimant did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 6, 2020. The appeal was not filed until June 9, 2020, which is after the date noticed on the disqualification decision.

Claimant stated that although she did receive the decision, she was having problems with her fax machine. She ended up having to borrow a friend's computer so that she could access her fax machine. Claimant further stated that she ended up emailing in her appeal. Claimant also stated that she spoke with a person at IWD who stated to claimant that it would be ok that she filed her decision late.

Claimant has received state unemployment benefits in this matter of \$3,125.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$4,800.00.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The ten calendar days for appeal begin 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).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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. 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure 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 section 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Claimant has received state unemployment benefits in this matter of \$3,125.00. Said payments are overpayments.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$4,800.00. Claimant is not eligible to receive these benefits.

Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. **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>.

DECISION:

The May 27, 2020, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Claimant has received state unemployment benefits in this matter of \$3,125.00. Said payments are overpayments.

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Blair A. Bennett
Administrative Law Judge

July 27, 2020
Decision Dated and Mailed

bab/sam