

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAVID JOHNSON**

Claimant

**APPEAL 20A-UI-08493-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES INC**

Employer

**OC: 04/12/20**

**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant/appellant, David Johnson, filed an appeal from the June 16, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 31, 2020. The claimant participated. The employer registered a phone number for Myka Gilchrist, but when the number was called for the hearing, the caller said it was the wrong number.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1 and Claimant Exhibit A were 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.

**NOTE TO CLAIMANT:** You may find additional information about food, housing, and other resources by dialing 211 or at <https://dhs.iowa.gov/node/3250>

**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 02) resulting in a denial of benefits was mailed to the claimant's last known address of record on June 16, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 26, 2020. The claimant received the decision within the appeal period. On the same day he received the denial of unemployment insurance benefits, he also received a letter from the Department of Human Services informing him that he had been denied food stamps. He thought he could “kill two birds with one stone” and appeal both to the Department of Human

Services. On June 25, 2020, the Department of Human Services acknowledged an appeal and stated specifically that it could not address the issue of unemployment insurance benefits (Claimant Exhibit A). On July 19, 2020, the claimant filed his appeal to the denial of unemployment insurance benefits (Department Exhibit D-1). Claimant filed his appeal online.

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

For the reasons that follow, the administrative law judge concludes the claimant'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).

In this case, the claimant stated he filed his appeal to unemployment insurance benefits along with an appeal to the Department of Human Services after being denied food stamps. Even with claimant's good faith error, the claimant was mailed a letter on June 25, 2020 telling him that the Department of Human Services could not accept his appeal to the decision denying him unemployment insurance benefits. The claimant did not file his appeal until July 19, 2020, which is over three weeks after the letter from DHS was sent to him.

Even if the administrative law judge used the date he received the letter from DHS telling him that it could not accept his appeal for unemployment insurance benefits as the first day to count for the appeal period, he still filed the appeal beyond ten days. The administrative law judge is sympathetic to the claimant, but based upon the evidence presented, concludes that the 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 § 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).

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**DECISION:**

The June 16, 2020, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

September 2, 2020  
Decision Dated and Mailed

jlb/mh

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:  
[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)