

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUG SPENCER

Claimant

GENERAL MILLS OPERATIONS LLC

Employer

APPEAL 19A-UI-08001-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/26/17

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant, General Mills Operations LLC., filed an appeal from the December 12, 2017 (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 November 1, 2019. The hearing was held jointly with Appeal 19A-UI-08002-JC-T. The claimant, Doug Spencer, participated personally. The employer, General Mills Operations LLC., participated through Brooke Moore, human resources coordinator. Kent Mayer attended the hearing but did not testify. Vonshalay Smith, a representative for Equifax, registered to testify on the issue of timeliness of appeal to the 2017 initial decision, but was unavailable when called, and did not participate.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibit D-1 (Employer Appeal letter) and Employer Exhibits 1-8 were admitted into evidence. 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.

ISSUE:

Did the employer file a timely appeal to the December 12, 2017 initial decision?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim for unemployment insurance benefits with an effective date of November 26, 2017 in response to the claimant’s separation from employment October 27, 2017. The employer received the notice of claim and determined it would not protest the receipt of unemployment insurance benefits. A copy of an initial decision was mailed to the employer’s address of record on October 12, 2017. The decision allowed benefits to the claimant and contained a warning that an appeal was due by December 22, 2017. The employer received

the decision with the appeal period and did not submit an appeal as it did not intend to dispute the claimant's receipt of unemployment insurance benefits. That decision was not appealed and became final on December 22, 2017.

Then the claimant opened a new claim for benefits with an effective date of September 8, 2019 in response to a temporary layoff from his current employer, John Deere. At that time, this employer was made aware of the claim, as the claimant still had wages in his base period from General Mills Operations LLC (although he has since requalified; see 19A-UI-08002-JC-T). The employer then appealed the claimant's receipt of benefits based upon his separation on October 11, 2019 via fax (Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal to the December 12, 2017 initial decision 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. The employer received the initial decision in 2017 and did not intend to file an appeal to the decision so it let the period to appeal expire. It was not until the employer realized that the claimant's base period for his 2019 claim may include the employer that it attempted to appeal the original decision granting benefits and not relieving the employer of charges. Based on the evidence presented, the administrative law judge concludes the employer's 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).

DECISION:

The December 12, 2017, (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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Decision Dated and Mailed

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