

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JON C SCHROEDER
Claimant

APPEAL 19A-UI-05578-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNICATION DATA LINK LLC
Employer

**OC: 05/26/19
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On July 12, 2019, the claimant filed an appeal from the June 19, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 6, 2019. Claimant participated personally and through witness Aretta Miles. Employer participated through vice president of human resources Danielle Naig. Department's Exhibit D-1 was received. Official notice was taken of the administrative record, including the reference 02 and reference 03 unemployment insurance decisions that were issued on this claim.

ISSUES:

Is the appeal timely?

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 19, 2019, Iowa Workforce Development mailed the reference 01 unemployment insurance decision denying benefits to the claimant's last known address of record. Claimant received the decision on June 21, 2019, within the appeal period. The decision warned that an appeal was due by June 29, 2019.

On June 20, 2019, Iowa Workforce Development mailed a reference 02 unemployment insurance decision allowing benefits to the claimant's last known address of record. On June 20, 2019, Iowa Workforce Development also mailed a reference 03 decision that states as follows:

DECISION:

YOU ARE NOT ELIGIBLE TO RECEIVE UNEMPLOYMENT INSURANCE BENEFITS.

EXPLANATION OF DECISION:

EACH PROTEST ON YOUR UNEMPLOYMENT INSURANCE CLAIM HAS BEEN DETERMINED SEPARATELY AND YOU HAVE RECEIVED A DECISION ON EACH ONE. THESE SEPARATE DECISIONS COULD CAUSE CONFUSION. THIS LETTER IS A SUMMARY OF THOSE SEPARATE DECISIONS. YOU HAVE BEEN DISQUALIFIED FROM RECEIVING BENEFITS FROM 5/28/19 UNTIL YOU REQUALIFY BY HAVING WORKED IN AND BEEN PAID WAGES FOR INSURED WORK EQUAL TO TEN (10) TIMES YOUR WEEKLY BENEFIT AMOUNT.

Claimant received the reference 02 and reference 03 decisions in the mail. However, claimant misinterpreted the decisions and believed he was allowed benefits. Claimant did not call Iowa Workforce Development for help until July 11, 2019. At that time, claimant was informed he was denied benefits and needed to appeal the reference 01 decision. Claimant appealed the decision the next day, July 12, 2019.

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:

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 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. Bd. 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 unemployment insurance 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 administrative law judge concludes that 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 June 19, 2019, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Decision Dated and Mailed

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