

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHELLE M KREFT**  
Claimant

**APPEAL 21A-UI-17570-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNCIL BLUFFS COMM SCHOOL DIST**  
Employer

**OC: 04/25/21  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for misconduct  
Iowa Admin. Code r. 871-24.25(25) - Resignation Vacation  
Iowa Code § 96.6(2) - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the July 23, 2021, (reference 01) unemployment insurance decision that denied benefits as claimant voluntarily quit on April 27, 2021. After due notice was issued, a hearing was held by telephone conference call on October 6, 2021. Claimant, Michelle Kreft, participated. Employer participated through Lucie Hengen Reed and Kelly Fischer. Employer's Exhibit 1 (an e-mail resignation to go on vacation) was admitted. Judicial notice was taken of the administrative record.

**ISSUE:**

Is the Employer's appeal timely?

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision denying benefits was mailed to Claimant's last known address of record on July 23, 2021. Claimant, Ms. Kreft, did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 2, 2021. The appeal was not filed until August 10, 2021, which is after the date noticed on the decision granting benefits. Ms. Kreft's reason for being late is her father-in-law's death on June 28, 2021 and when she received the decision, she set it aside and forgot about the matter. She later came across the paperwork after the appeal deadline. She called workforce development and was advised to submit an appeal anyway to see what happens.

Claimant's first day of employment was August 24, 2016 and her last day worked was April 27, 2021. Claimant, voluntarily quit by sending an e-mail on February 22, 2021 at 1:24pm to her supervisor, Megan McLaughlin stating that she is going to Cancun on April 28, 2021 and was putting in her resignation for April 27, 2021 being her last day. Claimant worked this date.

Claimant attempted to later withdraw her resignation, but employer denied her request, having already accepted the resignation and had started the hiring process to hire her replacement.

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

For the reasons that follow, the administrative law judge concludes Employer's appeal is untimely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service 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 is 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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.

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).

Here, claimant received the decision in the mail and, therefore, had an opportunity to file an appeal prior to the appeal deadline. Claimant failed to file an appeal in a timely manner because she forgot about the paperwork. While the administrative law judge is empathetic to the underlying reasons for forgetting, claimant's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. Claimant's appeal was not filed on time. The administrative law judge lacks jurisdiction (Iowa Code § 96.6(2)) to decide the other issues in this matter.

**DECISION:**

The July 23, 2021, (reference 01) 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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Darrin T. Hamilton  
Administrative Law Judge

October 12, 2021  
Decision Dated and Mailed

dh/mh