

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KAYLA M MCMILLAN
Claimant

APPEAL NO: 18A-UI-11035-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERIDIAN CCO
Employer

OC: 09/23/18

Claimant: Respondent (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal

IA C 871R-24.23 – Is the claimant eligible to receive partial unemployment benefits

STATEMENT OF THE CASE:

Kristina Stange filed a timely appeal from a representative's unemployment insurance decision dated October 9, 2018, (reference 03) that held the claimant, Kayla McMillan, eligible to receive unemployment insurance benefits beginning September 23, 2018, finding that the claimant was currently employed with the same employer in the same way as before her current claim holding that no charges be made against the employer's account for benefits paid to Ms. McMillan. The determination instructed the employer to report any separation issues so that they could be investigated so that employment insurance benefits would be correctly paid and charged. After due notice was issued, a telephone hearing was held on November 28, 2018. Although notified, the claimant did not participate. The employer, after a late call, participated by Kristina Stange, the employer and Tina Stange, the employer's mother and guardian.

ISSUES:

The issues in this matter are whether the appeal filed was timely, and whether the claimant's separation from employment has been adjudicated.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record finds: an unemployment insurance decision that allowed benefits and found the employer's account not be charged was mailed to the employer's last known address of record on October 9, 2018. The decision was sent to the employer % Veridian Credit Union at P. O. Box 45021, Waterloo, Iowa 50704. That address had been established as the address of record by the employer because Veridian was the company that was performing pay rolling services for the employer, and had been designated as the address of record. Kristina Stange, the employer, received the October 9, 2018 decision that held Ms. McMillan eligible to receive unemployment insurance benefits but found the employer's account was not chargeable on or about November 9, 2018, when the decision was forwarded by the Veridian Credit Union to the employer's home address.

Although the ten day appeal period had passed, the employer immediately filed an appeal. The employer did not dispute the portion of the determination that found the employer's account not

to be charged for benefits paid to Ms. McMillan, but disagreed with the portion of the determination stating that Ms. McMillan was currently employed by Kristina Stange as of September 23, 2018.

The employer's purpose in filing the appeal is to notify Iowa Workforce Development that Ms. McMillan is not currently employed by Kristina Stange and to inform the Agency that Ms. McMillan was separated from employment effective March 1, 2018, under what the employer believes to be disqualifying conditions. The employer wants the claimant's separation from employment adjudicated and investigated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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

In this matter, the employer's intent was not to disagree with the portion of the October 9, 2018, reference 03 decision that removed the employer's account from charging for any benefits paid to the claimant, but to dispute the portion of the decision that indicated that the claimant, Kayla McMillan was currently employed with Kristina Stange and to inform Iowa Workforce Development that there has been a separation from employment so that the separation can be investigated to determine if payments and the charging is correct. In this matter, the address of record was chosen with the acquiesce or approval of Tina Stange. There is a legal presumption that correspondence is deposited with the U.S. Postal Service and properly addressed and affixed with postage is delivered in due course.

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 871 IAC 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).

DECISION:

The representative's unemployment insurance decision dated October 9, 2018, reference 03, finding the employer not to be chargeable for benefits paid to Kayla McMillan but finding her eligible to receive unemployment insurance benefits beginning September 23, 2018, is affirmed. The issue of the claimant's separation from this employer is remanded to the claims section of Iowa Workforce Development for initial investigation and determination.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn