

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AMY KELLY**  
Claimant

**APPEAL 21A-UI-15226-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARCHER DANIELS MIDLAND CO**  
Employer

**OC: 03/28/21**  
**Claimant: Appellant (1)**

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Iowa Code 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 18, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was discharged for violating a known rule. The parties were properly notified of the hearing. A telephone hearing was held on August 27, 2021. The claimant participated and testified. The employer participated through Human Resources Manager Brian Cochran. Official notice was taken of the agency records. Exhibit D-1 and D-2 were received into the record.

**ISSUES:**

Whether the claimant's appeal is timely?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

A disqualification decision was mailed to claimant's last known address of record on June 18, 2021. The decision was mailed to the claimant's address within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 28, 2021. (Exhibit D-1) The appeal was not filed until July 7, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

The administrative record KLOG shows the claimant called Iowa Workforce Development on May 24, 2021, inquiring about when the fact finding interview would occur. The claimant did not hear back from the representative or her supervisor, in terms of when the decision would be made.

On June 11, 2021, the claimant left to get married on the West Coast. The representative called the claimant and conducted the cold call interview on June 17, 2021. The claimant testified the representative assured her that the decision would not be issued for two weeks. Given that

assurance, the claimant did not make any efforts to have someone check her mail. The claimant then did not return until more than two weeks later on July 7, 2021.

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

For the reasons that follow, the administrative law judge concludes the claimant's appeal is not timely. He further concludes he does not have jurisdiction to evaluate the merits of the claimant's separation.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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. 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.

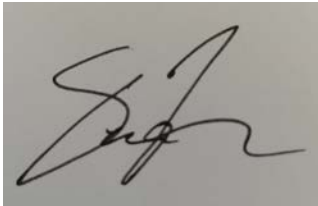
*Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant acknowledged the decision likely reached her address around the time of mailing. Instead, the claimant contends that the representative's informal assurance constitutes misrepresentation by Iowa Workforce Development. The administrative law judge cannot attribute the delay to the assurance of a representative. The fact remains that a notice was sent to the claimant's address and any efforts to either call Iowa Workforce Development or have someone check her mail would have resulted in no delay.

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 § 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 June 18, 2021, (reference 01), decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
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September 14, 2021  
Decision Dated and Mailed

smn/scn