

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TORIANO C REECE
Claimant

DOLGENCORP LLC
Claimant

APPEAL 22A-UI-01710-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20
Claimant: Appellant (1)

Iowa Code §96.6(2) – Timely Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Able to and Available to Work

STATEMENT OF THE CASE:

Toriano C Reece, the claimant/appellant, filed an appeal from the September 28, 2020, (reference 02) unemployment insurance (UI) decision that denied REGULAR UI benefits because of a June 15, 2020 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on February 10, 2022. Mr. Reece participated and testified. The employer notified Iowa Workforce Development (IWD) via fax on February 9, 2021 that it would not participate in the hearing. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Reece's appeal filed on time?
Did Mr. Reece voluntarily quit without good cause attributable to the employer?
Is Mr. Reece able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Reece at the correct address on September 28, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by October 8, 2020.

Mr. Reece received the decision in the mail. He called IWD and the representative told him to keep filing weekly claims. Mr. Reece did so.

IWD issued three different overpayments decisions finding Mr. Reece was overpaid REGULAR UI benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, and Lost Wage Assistance Payments (LWAP) benefits. Mr. Reece received those decisions in the mail. Mr. Reece filed an appeal via fax on December 27, 2021. The appeal was received by Iowa

Workforce Development on December 27, 2021. IWD set up appeals for the three overpayment decisions and the reference 02 decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Reece's appeal of the reference 03 decision was not filed on time.

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).

Mr. Reece received the reference 03 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Mr. Reece's delay in filing his appeal 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 in filing his appeal before the deadline. Mr. Reece's appeal

of the reference 03 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Mr. Reece's appeal of the reference 03 decision was not filed on time. The September 28, 2020, (reference 02) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
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Fax 515-478-3528

March 4, 2022
Decision Dated and Mailed

dz/mh