

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAIRI SACKFIELD**  
Claimant

**APPEAL NO: 13A-UI-03705-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 01/27/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Tairi Sackfield (claimant) appealed an unemployment insurance decision dated March 7, 2013, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from The University of Iowa (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 2, 2013. The claimant participated in the hearing. The employer participated through Mary Eggenburg, Benefits Specialist and Marcia Gingerich, Nurse Manager. Claimant's Exhibits A and B and Department Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's appeal is timely.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on March 7, 2013. The address did not include the claimant's apartment number but that was the address she provided when she filed her claim for unemployment insurance benefits and she had received previous information from Iowa Workforce at that same address. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 17, 2013. The appeal was not filed until March 28, 2013, which is after the date noticed on the disqualification decision. The claimant contends she did not receive the disqualification decision until it was given to her by the Iowa Workforce office on March 28, 2013. She admitted she was told the decision would be issued shortly after the fact-finding interview on March 6, 2013 and her appeal letter confirms that she went to the Iowa Workforce office to ask about it on both March 14 and March 21, 2013.

## REASONING AND CONCLUSIONS OF LAW:

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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, subsection 10, 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 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. 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).

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).

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. Her contention that she did not receive the disqualification decision at her address is

not credible. The claimant provided her address to Iowa Workforce without including the apartment number and previously received information at that same address without problem.

However, even if she did not receive it at the address she provided, she knew and was expecting it to be issued shortly after the fact-finding interview on March 6, 2013. She admitted she went to the Workforce office on March 14, 2013 and March 21, 2013 to specifically ask about the decision but contends it was not provided to her until March 28, 2013. That explanation strains credibility.

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 unemployment insurance decision dated March 7, 2013, reference 02, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are denied.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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