

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES W HENDERSON
Claimant

T3 CONCRETE PUMPING, LLC
Employer

APPEAL 21A-UI-17657-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/19/20
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

STATEMENT OF THE CASE:

James W Henderson, the claimant/appellant, filed an appeal from the September 4, 2020, (reference 01) unemployment insurance (UI) decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 6, 2021. Mr. Henderson participated and testified. Valorie Henderson, Mr. Henderson's wife, participated and testified in favor of Mr. Henderson. The employer participated through Anthony Davis, owner. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Henderson's appeal filed on time?
Was Mr. Henderson discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Henderson at the correct address on September 4, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 14, 2020.

Mr. Henderson received the decision in the mail. Mr. Henderson initially testified that he received the decision in the mail. He also testified that he received a call from an IWD representative telling him he was not eligible for benefits. Mr. Henderson's wife testified that they did not receive the decision in the mail because if they had they would have appealed. Mr. Henderson then testified that he did not receive the decision in the mail.

IWD issued two additional decisions, dated August 2, 2021 and August 3, 2021 that concluded Mr. Henderson was overpaid REGULAR UI benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits. Mr. Henderson received those decisions in the mail.

Mr. Henderson filed an appeal online on August 10, 2021. The appeal was received by Iowa Workforce Development on August 10, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Henderson's appeal of the September 4, 2020, (reference 01) 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 decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used his own common sense and experience.

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. Henderson received the decision in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Mr. Henderson's delay in filing its 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. Henderson's appeal of the reference 01 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issue in this matter.

DECISION:

Mr. Henderson's appeal of the September 4, 2020, (reference 01) decision was not filed on time. The September 4, 2020, (reference 01) decision is affirmed.



Daniel Zeno
Administrative Law Judge
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October 8, 2021
Decision Dated and Mailed

dz/scn