

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RENEE L ELDER**  
Claimant

**APPEAL NO: 12A-UI-13219-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIAL SILVERCREST CORP**  
Employer

**OC: 02/20/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 28, 2011 reference 01 that held she was discharged for misconduct on February 4, 2011, and benefits are denied. A telephone hearing was held on December 6, 2012. The claimant participated. The employer did not participate. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the claimant filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on March 28, 2011 with an appeal deadline date of April 7. The claimant received the decision. She did not submit an appeal at that time. The department confirmed this disqualifying decision when she filed an additional claim October 30, 2011 and issued a decision on November 30 that she had re-qualified from the disqualification by earning ten-times her weekly benefit amount.

When claimant was notified of the overpayment decision on October 26, 2012, she submitted an appeal on November 5, 2012 in response to it. Claimant admits she received the benefits.

The designated employer representative was not available when called for the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 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).

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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal.

The claimant did have a reasonable opportunity to file a more timely appeal by noting the deadline date and reading the appeal instructions. The claimant offered no good cause for the appeal delay. Even if there is an issue about an April 2011 appeal, claimant could have submitted an appeal in October/November 2011 when she filed an additional claim and the department let her know about the re-qualification process from the March 2011 disqualification.

**DECISION:**

The department decision dated March 28, 2011 reference 01 is affirmed. The claimant failed to file a timely appeal, and the department decision she was discharged for misconduct on February 4, 2011 remains in force and effect. Benefits are denied until the claimant re-qualifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant did re-qualify from this disqualification by reason of employment from Sedona Staffing.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/bjc