

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MIKAYELA J SPENCER**  
Claimant

**FOCUS SERVICES LLC**  
Employer

**APPEAL 22A-UI-04994-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant/appellant, Mikayela J. Spencer, filed an appeal from the August 28, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was held on April 4, 2022. The hearing was held with Appeals 22A-UI-04995-JC-T and 22A-UI-04997-JC-T. The claimant participated personally. The employer/respondent, Focus Services LLC., did not participate. Official notice of the administrative record was taken. Department Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely? Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence, the administrative law judge finds: An initial decision (reference 01) was mailed to the claimant/appellant’s address of record on August 28, 2020. The decision contained a warning that an appeal must be filed by September 7, 2020. The decision also directed the appellant to call the customer service line for assistance. Claimant moved from the address of record and did not notify IWD of the address change. She did not receive the initial decision. Claimant then attended basic training from May 4, 2021 until July 2021. Her military training continued from July 17, 2021 until September 17, 2021. During this period, claimant had limited phone contact available and her mail was collected for her. Once claimant returned home, she didn’t open or locate the envelope containing reference 03 initial overpayment decision until December 2021. This would have been claimant’s first knowledge of the underlying decision (the case at hand here). Claimant contacted IWD for assistance in early January 2022. She filed her appeal on February 19, 2022 (Department Exhibit 1). No evidence presented supports claimant’s appeal, once she spoke to IWD in January 2022, was delayed to due agency or postal service error.

Claimant separated from employment with Focus Services in October 2019. She then began employment at Riverfront Antiques LLC and Boutiques at Riverfront, before establishing her claim for unemployment insurance benefits effective March 22, 2020 when her employment was impacted by COVID-19. The issue of whether claimant has requalified for benefits has not been addressed by the Benefits Bureau.

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

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Initially, claimant in this case did not receive the initial decision after moving. However, claimant became aware of the decision through a subsequent overpayment decision. Claimant contacted IWD in January 2022 for guidance about the decisions. Even if claimant contacted IWD on the last day of January, for purposes of calculating 10 days to appeal, claimant's appeal was filed on February 19, 2022, beyond the prescribed period. The delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

The issue of whether claimant has requalified for benefits is remanded to the Benefits Bureau for an initial investigation and decision.

**DECISION:**

The August 28, 2020 (reference 01) initial decision is affirmed. The appeal is untimely and therefore dismissed.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

April 11, 2022  
Decision Dated and Mailed

jlb/scn

**NOTE TO CLAIMANT:**

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>