

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA B DONAHUE
Claimant

DOLGENCORP LLC
Employer

APPEAL 22A-UI-01060-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
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:

Andrea B Donahue, the claimant/appellant, filed an appeal from the February 17, 2021, (reference 01) unemployment insurance (UI) decision that denied REGULAR UI benefits because of a September 25, 2019 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on March 3, 2022. Ms. Donahue participated and testified. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Donahue's appeal filed on time?
Did Ms. Donahue voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Donahue at the correct address on February 17, 2021. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by February 27, 2021. If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. February 27, 2021 was a Saturday; therefore, the deadline was extended to Monday, March 1, 2021.

Ms. Donahue received the reference 01 decision in the mail. The previous day, Ms. Donahue participated in the fact-finding interview with an IWD representative. The representative told Ms. Donahue about Pandemic Unemployment Assistance (PUA) benefits. Ms. Donahue applied for PUA benefits that same day. Around the time Ms. Donahue received the reference 01 decision denying her REGULAR UI benefits, Ms. Donahue received a different decision from IWD finding her eligible for Pandemic Emergency Unemployment Compensation (PEUC) as of December 27, 2020.

Ms. Donahue had applied for UI benefits because of a downturn in her self-employment due to the COVID-19 pandemic. An IWD representative had previously told Ms. Donahue that she could apply for REGULAR UI benefits, she would likely be found not eligible for REGULAR UI benefits, then she could apply for PUA benefits due to her self-employment. Ms. Donahue did not appeal the reference 01 decision because she assumed she would be eligible for PUA benefits.

On February 20, 2021, IWD issued a decision denying Ms. Donahue PUA benefits. On November 30, 2021, IWD issued five additional decisions finding Ms. Donahue was overpaid REGULAR UI benefits, Pandemic Emergency Unemployment Compensation (PEUC) benefits, stated Extended Benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, and Lost Wage Assistance Payments (LWAP) benefits. Ms. Donahue received those decisions in the mail. Ms. Donahue filed an appeal via United States Postal Service mail postmarked on December 6, 2021. The appeal was received by Iowa Workforce Development on December 8, 2021. IWD set up appeals for the reference 01 decision and the five overpayment decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Donahue's appeal of the 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 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).

Ms. Donahue received the reference 01 decision before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision of the decision was valid. Ms. Donahue's delay in filing her 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 her appeal before the deadline. Ms. Donahue'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:

Ms. Donahue's appeal of the reference 01 decision was not filed on time. The February 17, 2021, (reference 01) decision is affirmed.



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

March 21, 2022
Decision Dated and Mailed

dz/kmj

NOTE TO MS. DONAHUE

- If you disagree with **this decision**, you may file an appeal to the **Employment Appeal Board (EAB)** by following the instructions on the first page of this decision.
- If you disagree with the **February 20, 2021 decision denying you PUA benefits**, you may file an appeal with the **IWD Appeals Bureau** online or via mail.

- Link to online appeal form: <https://www.iowaworkforcedevelopment.gov/ui-appeal>
- Information about appealing via mail (scroll to "HOW TO FILE A FIRST-LEVEL APPEAL") <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>
- Appeals Bureau phone: 800-532-1483
- Appeals Bureau email address: uiappealshelp@iwd.iowa.gov
- **If you are approved for PUA benefits**, the PUA benefits may be used to pay off the overpayment of REGULAR UI benefits.
- **If you are not approved for PUA benefits**, you will be required to repay the benefits you've received so far.