

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MINNIA JOSEPH
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-20420-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Minnia Joseph, filed an appeal from the November 10, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was discharged due to excessive absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on November 10, 2021. The appeal was heard jointly with 21A-UI-20421-SN-T and 21A-UI-20422-SN-T. The claimant participated. The employer did not participate. Official notice was taken of the agency records. Exhibit D-1 and D-2 were received into the record.

ISSUES:

Whether the claimant's separation is disqualifying?
Whether the claimant's appeal is timely? Whether there are reasonable grounds to consider her appeal otherwise timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A disqualification decision was mailed to claimant's last known address of record on November 10, 2020. The claimant did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 20, 2020. (Exhibit D-1) The appeal was not filed until September 16, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

The claimant acknowledged she received all of the decisions from Iowa Workforce Development in response to the administrative law judge's question asking if she had trouble receiving mail at her address. The administrative law judge asked the claimant repeatedly when she received the decision in this case. The claimant refused to even give an approximate date and instead testified to the merits. Eventually, an unknown person in the background said the claimant appealed the same day she received this decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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, subsections 10 and 11, 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 issued, 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).

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. The claimant refused to provide a specific date she received this decision despite being asked numerous times. Eventually, the claimant gave incredible testimony stating that she received the decision the same day she appealed. The administrative law judge does not find this testimony credible primarily because it does not appear to fit any of the decisions at issue. The claimant appealed early for the decisions sent in September 2021. The claimant did not even attempt to explain how a decision more than a year old arrived at the same time as the two decisions issued in September 2021. In that context, the administrative law judge finds her testimony on that point not credible and finds the decision was received on or about November 10, 2020.

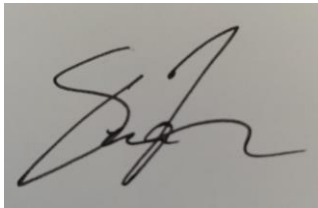
The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 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 November 10, 2020, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue of whether the claimant has earned ten times her weekly benefit amount in insured wages after her separation on June 17, 2020.



Sean M. Nelson
Administrative Law Judge
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December 30, 2021
Decision Dated and Mailed

smn/mh