

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DORREEN A SCHRADER

Claimant

APPEAL 22A-UI-07786-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 01/30/22

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Filing – Timely Appeal

Iowa Admin. Code r. 871-24.35 – Filing

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Employer filed an appeal from the March 3, 2022 (reference 01) unemployment insurance decision that allowed benefits finding claimant was discharged on January 27, 2022 for no disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on May 9, 2022. Claimant did not participate. Employer participated through Alison Rueschenberg, District Supervisor. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether employer filed a timely appeal.

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

Whether claimant was overpaid benefits.

Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

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

The Unemployment Insurance Decision was mailed to employer at the correct address of record on March 3, 2022. Employer received the decision. The date of receipt is unknown. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by March 13, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. March 13, 2022 was a Sunday; therefore, the deadline was extended to Monday, March 14, 2022. Employer appealed the decision via fax on March 22, 2022. IWD received the appeal on March 22, 2022. Employer gave no reason for the delay in submitting the appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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).

Employer did not appeal the decision until after the deadline. Employer has not established that its delay was due to agency error or misinformation or delay of the United States Postal Service. The appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Employer's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The March 3, 2022 (reference 01) unemployment insurance decision is affirmed.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

May 12, 2022
Decision Dated and Mailed

acw/acw