

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN A STEGER

Claimant

EDGEWOOD LOCKER INC

Employer

APPEAL 20A-UI-03198-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Respondent (1)

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
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Employer filed an appeal from the April 6, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 13, 2020, at 9:00 a.m. Claimant participated. Employer participated through Amanda Harbaugh, Human Resources Manager. Employer's Exhibits 1 – 6 were admitted. Official notice was taken of the administrative record.

ISSUES:

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.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.
Whether employer filed a timely appeal.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to employer at its correct address on April 6, 2020. Employer does not know when it received the decision. Mail from Des Moines, Iowa is typically received in Edgewood, Iowa in two or three days. Employer has no reason to believe that was not the case for the decision.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by April 16, 2020. Employer appealed the decision via facsimile on April 17, 2020. Employer's appeal was received by Iowa Workforce

Development on April 17, 2020. The delay in employer's appeal was due to employer's changes in shifts and hours due to Covid-19. The employee who is responsible for appealing unemployment insurance decisions was working remotely, but received mail via courier and scanned documents via email during this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's appeal was untimely.

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)(c) 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:
 - (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). 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.

Employer received the decision prior to the appeal deadline. Notwithstanding the impact covid-19 had on its business, employer had procedures in place for employees to work remotely and receive correspondence via courier or electronically. Any delay by employer in appealing the decision was not due to any 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 April 6, 2020 (reference 01) unemployment insurance decision is affirmed.



Adrienne C. Williamson
Administrative Law Judge
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May 14, 2020
Decision Dated and Mailed

acw/scn