

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CLAY E DENNY**  
Claimant

**URBANDALE CUISINE INC RUBY TUES**  
Employer

**APPEAL 20A-UI-15538-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**  
**Claimant: Appellant (1)**

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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:**

Clay E Denny, the claimant/appellant, filed an appeal from the September 28, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2021. Mr. Denny participated and testified. The employer participated through Tood Hoekstra.

**ISSUE:**

Was Mr. Denny's appeal filed on time?  
Was Mr. Denny laid off, discharged for misconduct or did he voluntarily quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Mr. Denny at the correct address on September 28, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 8, 2020. Mr. Denny received the decision before the deadline. Mr. Denny called Iowa Workforce Development ("Department") several times since he hadn't heard anything from the Department since he filed his claim and he wanted help filing the appeal. Due to the long wait times, Mr. Denny disconnected his call to the Department several times. Mr. Denny attempted to appeal online a few times but was unsuccessful because he is not good with computers. About two weeks after he received the decision, Mr. Denny was able to speak with a Department representative. The representative explained to Mr. Denny how to file an appeal. Mr. Denny spoke with a Department representative again on November 9, 2020. The representative explained to Mr. Denny how to file an appeal. Mr. Denny filed his appeal online on November 9, 2020. In his appeal, Mr. Denny explained that he filed his appeal on November 9, 2020 because "...life has been crazy...I've been juggling a lot of things and I hope you will be sympathetic." Mr. Denny also stated in his appeal that his address was the same address at which he had received the decision. The appeal was received by Iowa Workforce Development on November 9, 2020.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Denny's appeal 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).

Mr. Denny received the decision before the deadline. The notice provision of the decision was valid. It is understandable for Mr. Denny to have been concerned about the decision. However, the front page of the decision specifically advised Mr. Denny that his appeal must be either postmarked or received by the Department by October 8, 2020. Furthermore, the back page of the decision specifically advised Mr. Denny that he could file an appeal online or he could file an appeal in writing by mail or by fax. The back page of the decision includes instructions on what information to include in the appeal and the mailing address, fax number, phone number, email address and online portal for filing an appeal. Mr. Denny filed his appeal on November 9, 2020.

His delay 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. Mr. Denny's appeal was not filed on time and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the Mr. Denny's termination of employment

**DECISION:**

Mr. Denny's appeal was not filed on time. The September 28, 2020, (reference 01) unemployment insurance decision is affirmed.



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Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
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February 10, 2021  
Decision Dated and Mailed

dz/kmj