

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KYLIE R MEIER
Claimant

APPEAL NO: 08A-UI-01387-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
CURRIES – GRAHAM
Employer

OC: 09/23/07 R: 02
Claimant: Appellant (1)

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Kylie R. Meier (claimant) appealed a representative's October 17, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from AADG, Inc. / Curries - Graham (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-01388-DT. The claimant participated in the hearing with one other witness, Scott Meier. Dan McGuire appeared on the employer's behalf with one other witness, Jeff Neuwohner. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on October 17, 2007. The claimant received the decision at least by early November 2007. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 27, 2007. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, November 29, 2007. The appeal was not filed until it was hand delivered to the local Agency office on February 6, 2008, which is after the date noticed on the disqualification decision. The reason for the delay was that in November and December 2007 the claimant was working for one employer and that in January 2008 the claimant was working an assignment through a temporary employment firm. Even though she disagreed with the representative's decision, she assumed she was not eligible for unemployment insurance benefits during the time she was employed anyway, and concluded there was no reason to file

an appeal. She has not earned sufficient wages from that subsequent employment to requalify for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review.

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . Unless 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.

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). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 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 claimant did not realize that the disqualification could result in her continuing to be disqualified from unemployment insurance benefits after her new employment ended if she did not earn requalifying wages. However, this failure to understand the potential future impact of the disqualification decision is not a legal excuse under which the administrative law judge could conclude that the claimant did not have a reasonable opportunity to file an appeal within at last a timely period after actually receiving the decision.

871 IAC 24.35(2) provides in pertinent part:

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 department

that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

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) or other factors outside the appellant's control. The administrative law judge further concludes that because the appeal was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The representative's October 17, 2007 decision (reference 01) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Benefits are denied.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs