

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS STRAIN
Claimant

APPEAL NO. 10A-UI-04894-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL IN A DAY LLC
Employer

OC: 06/28/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 8, 2009, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for on May 5, 2010. Claimant failed to respond to the hearing notice and did not participate. Since this case involved the preliminary issue of whether the claimant's appeal was timely, it was not necessary to take the testimony of the employer's representative, who was available for the hearing. Official notice is taken of agency records. The record consists of the agency records.

ISSUE:

Whether the claimant's appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

A representative's decision was issued on December 8, 2009, which held that the claimant was not eligible for unemployment insurance benefits. The decision stated that it would become final unless an appeal was postmarked by December 18 2009, or received by Iowa Workforce Development Appeal Section by that date. The claimant's appeal was filed on March 30, 2010. The claimant stated that he did not receive the decision denying him benefits. The claimant did not state when he found out that he had been denied benefits.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 respond to the hearing notice and did not participate in the hearing. The claimant's appeal was clearly past the ten day deadline. Although the claimant stated in his notice of appeal that he did not receive the original decision denying him benefits, it is not clear when he found out about the denial of benefits. The administrative law judge has insufficient evidence to conclude that the claimant was deprived of a reasonable opportunity to assert an appeal in a timely fashion and must therefore hold that the appeal is not timely. Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claimant's claim for unemployment insurance benefits.

DECISION:

The decision of the representative dated December 8, 2009, reference 05, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs