

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KALA M YANAUSCH
PO BOX 134
601 MAIN ST
HILLS IA 52235-0134

NCS PEARSON INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10358-RT
OC: 09-07-03 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2- Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, Kala M. Yanausch, filed an appeal from an unemployment insurance decision dated September 9, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on October 18, 2004 with the claimant not participating. Although the claimant had called in a telephone number where she purportedly could be reached for the hearing, when the administrative law judge attempted to call that number at 2:02 p.m., he reached a voice mail identifying it for the correct number. The administrative law judge left a message for the claimant that he was going to proceed with the hearing and, if the claimant wanted to participate in the hearing, she needed to call before the record was closed and the hearing was over. The administrative law judge provided an “800”

number for the claimant to call. The claimant did not do so. Jill Hugunin, human resources representative, participated in the hearing for the employer, NCS Pearson, Inc. Department Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit 1, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on September 9, 2004, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because she voluntarily quit work on April 12, 2004 because she was arrested and confined in jail and her quitting was not caused by her employer. This decision was sent to the claimant on the same day, September 9, 2004. This decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by September 20, 2004 (the decision actually said September 19, 2004 but since this was a Sunday the appeal would be due the next business or working day). However, as shown at Department Exhibit 1, the claimant's appeal was mailed in an envelope bearing a postmark of September 22, 2004, making the appeal two days late. The appeal itself was dated September 21, 2004 which would be one day late. The claimant states in her appeal that the appeal is late but she thought she had a job and was denied the job. However, the claimant filed weekly claims for unemployment insurance benefits for benefit week ending September 11, 2004 and benefit week ending September 18, 2004, the period in which she should have filed an appeal so it appears that the claimant was attempting to claim benefits for the period during which she could have appealed the decision.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant filed a timely appeal or, if not, whether the claimant demonstrated good cause for such failure. The claimant's appeal is not timely and the claimant has not demonstrated good cause for the delay in the filing of her appeal and, as a consequence, the claimant's appeal should not be accepted and the administrative law judge has no jurisdiction to reach the remaining issue.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach that issue.

Iowa Code Section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the

burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the claimant has the burden to prove that her appeal was timely or that she had good cause for a delay in the filing of her appeal. The administrative law judge concludes that the claimant has not met her burden of proof to demonstrate by a preponderance of the evidence either that her appeal was timely or that she had good cause for a delay in the filing of her appeal. As set out in the findings of fact and as shown at Department Exhibit 1, the claimant's appeal on its face is two days late. The claimant did not participate in the hearing and provide reasons for her delay in filing her appeal. The claimant states in her appeal that the appeal is late but that she thought she had a job but was denied the job. The claimant did not participate in the hearing to provide specific testimony in this regard. Even so, the administrative law judge does not believe that having a job is a

reason to not file a timely appeal especially where, as here, the claimant filed weekly claims for unemployment insurance benefits for two weeks, benefit weeks ending September 11 and September 18, 2004, the period of time during which she should have timely filed the appeal. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated September 9, 2004, reference 01, is not timely and the claimant has not demonstrated good cause for the delay in the filing of her appeal. Therefore, the administrative law judge concludes that the claimant's appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the other issue presented. The administrative law judge finally concludes that the representative's decision of September 9, 2004, reference 01, should remain in full force and effect.

DECISION:

The representative's decision of September 9, 2004, reference 01, is to remain in full force and effect. The claimant, Kala M. Yanausch, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits. The claimant's attempted appeal is not timely and the claimant has not demonstrated good cause for its delay.

tjc/kjf