

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAISY GOODSON
Claimant

USPS
Employer

APPEAL 17A-UCFE-00024-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/19/17
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 11, 2017, (reference 01) that denied benefits. A telephone hearing was held on May 22, 2017. The claimant participated in the hearing. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Department exhibit D-1 was admitted into evidence at the hearing. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision. Based on the evidence, the arguments of the parties, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last known address of record on April 11, 2017.

The claimant received the decision within the ten-day period for appealing the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 21, 2017. She filed a written appeal on May 4, 2017, (Department exhibit D-1) which is after the time period for appealing had expired. The claimant delayed in filing her appeal because she had moved in late March to the address of record, and was busy settling in with a new family, between her and her boyfriend.

The claimant stated she lost the copy of initial decision for a period of time, and was under stress due to her boyfriend having surgery, her having custody of her children 80% of the time, and having family support located two hours away.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

Iowa Code § 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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). In this case, the claimant received the initial decision within the prescribed period to appeal but lost it as she was busy settling into her home and caring for her family. Based on the evidence presented, the administrative law judge concludes the claimant had a reasonable opportunity to file a timely appeal.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The unemployment insurance decision dated April 11, 2017, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn