

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELLY J STILL
Claimant

APPEAL NO. 21A-UI-07150-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 11/29/20
Claimant: Appellant (1R)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(4) – Second Benefit Year

STATEMENT OF THE CASE:

The claimant, Kelly Still, filed a late appeal from the January 27, 2021 (reference 01) decision that denied state benefits effective November 29, 2020, based on the deputy's conclusion that the claimant did not meet the eight-times-weekly-benefit-amount minimum earnings requirement to be eligible for benefits in connection with a second benefit year. After due notice was issued, a hearing was held on May 1, 2021. The claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-07151-JTT. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBIN, DBRO, Wage-A, the monetary record mailed December 1, 2020, the IWD Overpayment statement, April 7, 2021 notice regarding PEUC eligibility in connection with the December 1, 2019 claim year, as well as the January 27, 2021 (reference 01) disqualification decision and the March 2, 2021 (reference 02) overpayment decision.

ISSUES:

Whether the claimant's appeal from the January 27, 2021 (reference 01) decision timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 27, 2021, Iowa Workforce Development mailed the January 27, 2021 (reference 01) decision to the claimant at his Des Moines last-known address of record. The reference 01 decision denied state benefits effective November 29, 2020, based on the deputy's conclusion that the claimant did not meet the eight-times-weekly-benefit-amount minimum earnings requirement to be eligible for benefits in connection with a second benefit year. The decision stated that the decision would be final unless an appeal was postmarked by February 6, 2021 or was received by the Appeals Bureau by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal deadline would be extended to the next working day. February 6, 2021 was a Saturday and the next working day was Monday, February 8, 2021. The claimant received the reference 01 decision in a timely manner, prior to

the appeal deadline. The claimant did not note the appeal deadline information and did not file an appeal by the extended February 8, 2021 deadline.

On March 2, 2021, Iowa Workforce Development mailed a March 2, 2021 (reference 02) overpayment to the claimant. The reference 02 overpayment decision was prompted by the reference 01 disqualification decision. The overpayment decision included a March 12, 2021 deadline for appeal. On March 9, 2021, the claimant completed and transmitted an online appeal from the overpayment decision. The Appeals Bureau received the appeal on March 9, 2021 and treated it as also a late appeal from the reference 01 decision.

REASONING AND CONCLUSIONS OF LAW:

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, subsections 10 and 11, 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule

871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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).

The claimant's appeal from the January 27, 2021 (reference 01) decision was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the extended February 8, 2021 extended deadline. The claimant waited until March 9, 2021 to file the appeal. Because the late filing of the appeal was attributable to the claimant, and not attributable to IWD error or misinformation or delay or other action of the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The decision that denied state benefits effective November 29, 2020, based on the deputy's conclusion that the claimant did not meet the eight-times-weekly-benefit-amount minimum earnings requirement to be eligible for benefits in connection with a second benefit year, remains in effect.

This decision does not disturb the Agency's determination that the claimant is eligible for Pandemic Emergency Unemployment Compensation (PEUC).

This decision is remanded to the Benefits Bureau for determination of whether the claimant has at this point met the eight-times-weekly-benefit-amount in light of the employment he commenced in March 2021.



James E. Timberland
Administrative Law Judge

May 10, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law in connection with the benefits year that started November 29, 2020. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law, are currently unemployed for reasons related to COVID-19, and have exhausted all other benefit eligibility, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.