

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TRACY L BAZAN
Claimant

THE HON COMPANY
Employer

APPEAL NO. 16A-UI-06370-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/16/15
Claimant: Appellant (2)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from the May 12, 2016, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on June 23, 2016. The claimant did participate. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether the appeal is timely.

Whether claimant is able and available for work, or on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last-known address of record on May 12, 2016. Claimant did receive the decision. On the same date when the claimant received the decision in this matter denying unemployment benefits, the claimant also received another decision (reference 04) which allowed claimant benefits. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 22, 2016. The appeal was not filed until June 7, 2016, which is after the date noticed on the disqualification decision. Claimant stated that she believed that the decision granting benefits allowed her benefits in spite of the other decision, and therefore there was no need to file an appeal.

Claimant was on a leave of absence from her employer from October 2015 through February 9, 2016, as claimant was caring for her child suffering from cancer. Claimant's child was suffering much less in February and claimant attempted multiple times in advance of the end of her leave to arrange a return date with a human resources officer from employer. The human resources officer did not return multiple calls. Claimant attempted to return to work on or before February 10, 2016, and has remained able and available for employment throughout all times since that date. Claimant began filing for benefits in this matter on or around April 30, 2016.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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). The record shows that the appellant was reasonably confused as to whether she was eligible in this matter to receive benefits or not. As such, it is understandable that claimant did not file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to an Agency error in sending out seemingly conflicting information to the claimant on the same day. As such, the administrative law judge further concludes that the appeal will be deemed to have been timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge has 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).

Whereas claimant informed employer that she was able and available for work since the agreed-to date when claimant was to return to work. Claimant not being called back to work at the time the leave of absence ended was not as a result of claimant's being unable to work. As such, claimant is not disqualified for receiving unemployment benefits. Claimant began filing for benefits in this matter as of April 30, 2016.

DECISION:

The May 12, 2016, reference 03, decision is reversed. The appeal in this case is deemed to have been timely filed but the decision of the representative is reversed. Claimant is able and available for work as of the date of her most recent reporting in this matter, April 30, 2016.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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