

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARC D RUDEBECK
Claimant

APPEAL NO: 09A-UI-00195-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/13/08 R: 03
Claimant: Appellant (2)**

Section 96.4-3 - Active Search for Work
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Marc D. Rudebeck (claimant) appealed a representative's December 16, 2008 decision (reference 01) that warned him that he had failed to make the minimum job contacts during the week ending December 13, 2008. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on January 21, 2009. The claimant participated in the hearing. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely? Is the work search warning issued to the claimant appropriate in this case?

FINDINGS OF FACT:

The representative's decision warning him about the job search was mailed to the claimant's last-known address of record on December 16, 2008. The claimant received the decision on or about December 20, 2008. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 26, 2008. The appeal was not filed until it was postmarked January 5, 2009, which is after the date noticed on the disqualification decision.

The representative's decision had contained a number for the claimant to call if he had questions, which he did try to call on several occasions prior to December 26. The number was for the local office in Waverly, which was closed due to the flooding of 2008. The claimant attempted to contact the regional office in Waterloo, Iowa, and did get through to someone there prior to December 26. He indicated he was calling because of the warning decision and asking what he needed to do about it; the person to whom he spoke indicated she was a receptionist and could not answer his question, but that someone else would call him back to discuss his question with him. The claimant did not hear back from anyone in the Waterloo office. He

subsequently attempted to contact and did ultimately speak with someone in the Des Moines office, who advised him that he did not need to worry about the decision, that it would not matter unless he again failed to report less than two job contacts.

The claimant established a claim for unemployment insurance benefits effective November 30, 2008. He made at least two job contacts each week, including the week ending December 13. When he made his weekly claim for that week, he inadvertently hit "1" rather than "2" when answering the question on the weekly claim about his job contacts.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 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 record shows that the appellant did not have a reasonable opportunity to 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 Agency error or misinformation pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

Iowa Code § 96.4-3 and 871 IAC 24.22(3) provide that a claimant must make a personal and diligent effort to find a job and that a claimant shall be ineligible for benefits for any period for which the Agency finds the individual failed to make an earnest and active search for work. The evidence establishes the claimant made multiple job contacts during the week ending

December 13, 2008. Therefore, the warning issued to him in the representative's decision is not warranted.

DECISION:

The unemployment insurance decision dated December 16, 2008 (reference 01) is reversed. The appeal in this case is treated as timely. The claimant made an active search for work during the week ending December 13, 2008. Therefore, the warning issued to him was not warranted and shall be removed from his benefit history.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css