

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RALPHYEL WHITE
Claimant

APPEAL 21A-UI-10399-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

FAMILY DOLLAR STORES OF IOWA LLC
Employer

OC: 07/12/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 31, 2021 (reference 08) unemployment insurance decision that denied benefits because he was making the same hours and wages since his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on June 28, 2021, at 9:00 a.m. The claimant participated. The employer participated through Store Manager Bob Cripps. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether the claimant's appeal is timely? Whether it has reasonable grounds to be considered otherwise timely?
Whether claimant is totally, partially or temporarily unemployed?
Whether claimant is able to and available for work?
Whether claimant is still employed at the same hours and wages?
Whether employer's account is subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A disqualification decision was mailed to claimant's last known address of record on March 31, 2020. The claimant did not receive the decision within ten days because he moved to another address unbeknownst to Iowa Workforce Development. The claimant did not attempt to update his address until after he had received the decision forwarded to his new address.

The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 10, 2021. The claimant filed two appeals in response to the decision, both of which occurred after April 10, 2021. The first appeal was filed by email on April 14, 2021.

(Exhibit D-3) The second appeal was filed on Iowa Workforce Development's online appeal portal on April 15, 2021. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant's appeal is not timely and does not have reasonable grounds to be considered otherwise timely. He further concludes he does not have jurisdiction to rule on the merits of the claim.

Iowa Code section 96.6(2) provides, in pertinent part:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant.

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).

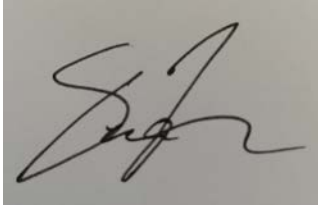
The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative 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 did have a reasonable opportunity to file a timely appeal. Although the claimant did not receive the decision until after the appeal period lapsed, this was entirely attributable to his failure to update his address with Iowa Workforce Development. As a result, the delay cannot be attributable to the US Postal Service or Iowa Workforce Development. Such circumstances are required when a claimant is contending his or her appeal has reasonable grounds to be considered otherwise timely.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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 March 31, 2021 (reference 08), decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is centered within a light gray rectangular box.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

July 12, 2021
Decision Dated and Mailed

smn/scn