

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICK A BREDE
Claimant

APPEAL 20R-UI-00822-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/07/19
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.3(2) – Able & Available – Identity Verification
Iowa Code § 96.6(2) – Filing – Timely Appeal
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 31, 2019 (reference 01) unemployment insurance decision that allowed benefits effective July 28, 2019. Claimant was properly notified of the hearing. A telephone hearing was scheduled for December 3, 2019. No hearing was held because appellant failed to respond to the hearing notice and provide a telephone number at which appellant could be reached for the scheduled hearing. On December 4, 2019, a default decision was issued dismissing the appeal. (See 19A-UI-08772-AW-T)

On December 17, 2019, claimant appealed to the Employment Appeal Board (EAB). On December 17, 2019, the EAB issued a decision affirming the administrative law judge's default decision and denying claimant's request for remand. On January 10, 2020, claimant appealed to the EAB requesting the appeal be reopened. On January 28, 2020, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on February 12, 2020 at 8:00 a.m. Claimant participated. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant filed a timely appeal.
Whether claimant was able to and available for work.
Whether claimant failed to report as directed by a department representative.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at 917 Heartland Hills Drive, Waterloo, Iowa on July 31, 2019. That was claimant's correct address on that date. Claimant does not know the date he received the decision. Mail from Des Moines, Iowa is typically received in Waterloo, Iowa in two to three days.

The decision states that claimant is eligible to receive unemployment insurance benefits beginning July 28, 2019. The decision further states that claimant was disqualified from receiving benefits for failing to prove his identity, that he subsequently provided the requested documents and that his identity had been verified. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by August 10, 2019. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. August 10, 2019 was a Saturday; therefore, the appeal deadline was extended to Monday, August 12, 2019.

When claimant read the decision, he understood that he was approved for benefits. However, claimant either did not read or did not understand the effective date of the approval. Claimant did not believe that he needed to take further action. Claimant is not used to the unemployment insurance system and finds it difficult to follow the process's "intricate details." In November 2019, claimant checked the balance of his benefit debit card and learned that he never received benefit payments in July. Claimant appealed the decision via mail on November 4, 2019 as evidenced by the postmark. Claimant's appeal was received by Iowa Workforce Development on November 6, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was untimely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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.

Claimant received the decision prior to the appeal deadline. Claimant's delay in appealing the decision was due to his failure to read the decision in its entirety or due to his confusion about the decision. Claimant's argument that he lacks experience with filing for unemployment insurance benefits and finds it difficult to follow the intricate details is not persuasive. The decision clearly states that benefits are allowed beginning July 28, 2019, which means that they are not allowed prior to that date. If claimant had any questions about the decision or its effect, he could have called the customer service number provided on the decision. Claimant's delay was also attributable to his decision not to monitor the receipt of his benefits for three months after the decision was issued. The reasons for claimant's delay in filing his appeal were not due to any agency error or misinformation or delay of the United States Postal Service. The administrative law judge concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The claimant's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The July 31, 2019 (reference 01) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

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