

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIMEYER, AMELIA, L
Claimant

APPEAL NO. 13A-UI-01219-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLATINUM HOLDINGS LLC
GRAND HARBOR RESORT & WATERPARK
Employer

OC: 12/16/12
Claimant: Respondent (1-R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the January 10, 2013, reference 01, decision that allowed benefits to the claimant effective December 16, 2012 based on an agency conclusion that the claimant was available for work but partially unemployed. After due notice was issued, a hearing was held on March 4, 2013. Claimant participated. Alicia Fricke, Executive Assistant, represented the employer. The hearing of this matter was consolidated with the hearing an appeal number 13A-UI-01220-JTT. Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether the employer's appeal from the January 10, 2013, reference 01 decision was a timely appeal. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 10, 2013, Iowa Workforce Development mailed to the employer, at the employer's last-known address of record, two unemployment insurance decisions entered by a claims deputy. One decision was the January 10, 2013, reference 01 decision based on a December 16, 2012 original claim date. The second decision was the January 10, 2013, reference 03 decision based on a December 18, 2011 original claim date. Both decisions allowed benefits to the claimant under the theory that she was partially unemployed from her employment at Grand Harbor Resort & Waterpark. The employer received both decisions on or about January 12, 2013. Both decisions carried a warning that any appeal had to be postmarked by January 20, 2013 or received by the Appeals Section by that date. Both decisions also indicated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, that the deadline would be extended to the next working day. January 20, 2013 was a Sunday. January 21, 2013 was the Martin Luther King, Jr. legal holiday. Workforce Development offices were closed on both days. The next working day was Tuesday, January 22, 2013.

On February 1, 2013, the employer drafted a written appeal and faxed the written appeal to the Appeals Section. The employer attached a copy of the January 10, 2013, reference 01 decision based on the December 16, 2012 original claim date. The Appeals Section received the employer's faxed appeal on February 1, 2013 and treated it as an appeal from both decisions entered on January 10, 2013.

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, 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.

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 871 AC 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 871 IAC 24.35(1)(b).

The appeal in question was filed on February 1, 2013, when the Appeals Section received the employer's faxed appeal.

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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The employer had both decisions on January 12, 2013, but delayed filing an appeal until February 1, 2013.

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. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 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).

The determination of whether a claimant meets the work ability and/or work availability requirements, as well as whether a claimant is partially unemployed, involves a week-by-week determination. The employer's untimely appeal from the January 10, 2013, reference 01 decision does not bar determination of the able, available and partial unemployment issues for the period beginning February 1, 2013. That date corresponds with the filing date of the employer's appeal. This matter will be remanded to the Claims Division for determination of these issues *for the period beginning February 1, 2013*. The Claims Division shall enter a decision from which the parties may appeal.

DECISION:

The Agency representative's January 10, 2013, reference 01, decision is affirmed. The employer's appeal was untimely. Pursuant to the lower decision, the claimant was eligible for benefits under a theory of partial unemployment effective December 16, 2012, provided she is otherwise eligible. The employer's account may be charged.

This matter will be remanded to the Claims Division for determination of whether the claimant was able and available for work, or partially unemployed, *for the period beginning February 1, 2013*. The Claims Division shall enter a decision from which the parties may appeal.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs