

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRENNA M TAYLOR WARREN
Claimant

APPEAL NO. 22A-UI-08032-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 06/27/21
Claimant: Appellant (2)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.4-4 – Wages Earned Between Claim Years

STATEMENT OF THE CASE:

Claimant filed an appeal from the August 3, 2021, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 10, 2022. The claimant did participate.

ISSUES:

Whether the appeal is timely?

Whether claimant has worked and earned insured wages of at least eight times the weekly benefit amount of the previous claim year?

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 August 3, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 13, 2021. The appeal was not filed until March 23, 2022, which is after the date noticed on the disqualification decision. Claimant stated she did not receive the decision.

Claimant worked for Elmwood Care Center as a CNA since September of 2019. She worked for the employer after her filing of an original claim on June 28, 2020, and earned \$3,680.74 in the third quarter of 2020 and \$4,318.34 in the fourth quarter of 2020 prior to claimant first ending being placed on a leave of absence then terminated from her employment. Claimant's weekly benefit amount during this claim year was \$248.00 and 8x this amount is \$1,992.00.

REASONING AND CONCLUSIONS OF LAW:

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

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. . . . 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.

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 did not have a reasonable opportunity to file a timely appeal as she did not receive the decision.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was potentially due to an Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal is therefore deemed timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains 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 administrative law judge holds claimant has earned sufficient wages during the last benefit year to qualify for benefits.

Iowa Code section 96.4(4)a-c provides:

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

4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured

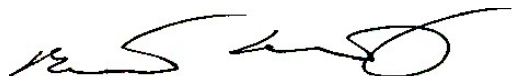
work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

In this matter, claimant has earned nearly \$8,000.00 since filing her original claim on June 28, 2020. Claimant's weekly benefit amount during this claim year was \$248.00 and 8x this amount is \$1,992.00. Claimant has earned sufficient wages to qualify for benefits in a second benefit year.

DECISION:

The August 3, 2021, reference 01, decision is reversed. The appeal in this case was deemed timely, and the decision of the representative is reversed as claimant earned sufficient wages to qualify for benefits in a second benefit year.



Blair A. Bennett
Administrative Law Judge

May 31, 2022
Decision Dated and Mailed

bab/kmj