

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MIHKAYLA R EDGERTON
Claimant

STAMPEDES SPORTS BAR & GRILL LLC
Employer

APPEAL NO. 20A-UI-09537-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 7, 2020, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on September 25, 2020. The claimant did participate. Employer failed to respond to the hearing notice and did not participate. The administrative law judge takes notice of documents contained in the administrative file.

ISSUES:

Whether the appeal is timely?

Whether claimant is able and available for work?

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 July 7, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 17, 2020. The appeal was not filed until August 11, 2020, which is after the date noticed on the disqualification decision. Claimant stated that she had originally listed her address as her mother's address in Mason City. Claimant further stated that she was not sure if the original decision was received by her when she went to her mother's residence, or if she received it when she visited a P.O. Box. Claimant stated she was not sure if she had forwarded her mail to the P.O. Box where the Rockwell mail is received.

Claimant stated that she picked up her letter from her P.O. Box on July 20. Claimant stated that she then called a representative from IWD who suggested that claimant might want to file for PUA benefits. (It is noted that claimant has not filed for PUA benefits.) Claimant stated that she then called back IWD a number of weeks later and was advised to file an appeal of the July 7, 2020 decision. Claimant then filed her appeal on August 11, 2020.

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 have a reasonable opportunity to file a timely appeal. The claimant chose to have her address listed as her mother's address. Claimant did not change that address with IWD after she moved. This would account for a late receipt of the document that is not the responsibility of the USPS or IWD. Additionally, claimant stated she received the decision on July 20, 2020 but did not file an appeal until August 11, 2020. Claimant did not say she was instructed not to file an appeal before that date. Claimant called IWD 22 days after receiving the decision denying benefits, and only then chose to file the appeal.

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 Iowa Admin. Code r. 871-24.35(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).

DECISION:

The July 7, 2020, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Blair A. Bennett
Administrative Law Judge

September 29, 2020
Decision Dated and Mailed

bab/sam