

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CATHERINE R RIEKENA**  
Claimant

**APPEAL NO. 21A-UI-06121-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGWSR COMMUNITY SCHOOL DISTRICT**  
Employer

**OC: 08/23/20**  
**Claimant: Respondent (1R)**

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

**STATEMENT OF THE CASE:**

The employer filed a late appeal from the November 6, 2020, reference 01, decision that allowed benefits to the claimant effective August 23, 2020, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work and available for work, but that the employer was not providing the same pattern of employment as in the base period. After due notice was issued, a hearing was held on May 5, 2021. The claimant did not provide a telephone number for the hearing and did not participate. Deb Barker represented the employer. The administrative law judge took official notice of the November 6, 2020, reference 01, decision and received Exhibits 1 and 2 into evidence.

**ISSUE:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 6, 2020, Iowa Workforce Development mailed the reference 01, decision to the employer at its Ackley, Iowa last-known address of record. The employer received the decision in a timely manner. The decision allowed benefits to the claimant effective August 23, 2020, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work and available for work, but that the employer was not providing the same pattern of employment as in the base period. The decision stated that it would become final unless an appeal was postmarked by November 16, 2020 or was received by the Appeal Section by that date. The decision provided clear and concise instructions for filing an appeal online, by fax, by email, or by mail. The decision included a customer service telephone number as well as a number for the Appeals Bureau that the employer could use if the employer had questions or needed assistance in filing an appeal. The employer reviewed the decision, but elected not to take steps to file an appeal by the appeal deadline. Despite the language in the decision that stated the employer's

account would not be relieved of charges, the employer assumed no charge would be assessed. The employer did not contact IWD with questions prior to the appeal deadline.

The matter returned to the employer's attention in January 2021, when the employer received a quarterly statement of charges that included a charge for benefits paid to the claimant for the fourth quarter of 2020. On February 3, 2021, the employer contacted the IWD Tax Bureau by email with questions about the charge to the employer's account. On February 12, 2021, the Tax Bureau responded to the employer by email, advised the employer that the employer needed to file an appeal, and forwarded the employer's February 3, 2021 correspondence to the Appeals Bureau. See Exhibit 1. The Appeals Bureau docketed an appeal on February 12, 2021. On the morning of February 15, 2021, the employer faxed an appeal to the Appeals Bureau.

#### **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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

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 employer's appeal from the November 6, 2020, reference 01, decision was untimely. The employer received the decision in a timely manner, had reasonable opportunity to file an appeal by the November 16, 2020 deadline, but elected not to file an appeal by the statutory deadline. The employer delayed filing an appeal until February 2021. Even though the employer did direct an appeal to the Appeals Bureau until February 15, 2021, the Appeals Bureau acknowledged the material forwarded by the Tax Bureau on February 12, 2021 as a bona fide appeal. Regardless of whether one considers the appeal file on February 3, February 12, or February 15, 2021 as the filing date, the delay in filing the appeal was unreasonable. The weight of the evidence fails to establish that Iowa Workforce Development or the United States Postal Service contributed to the late filing of the appeal. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the November 6, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

#### **DECISION:**

The employer's appeal was untimely. The November 6, 2020, reference 01, decision remains in effect.

Pursuant to the employer's request, this matter is **remanded** to the Tax Bureau for that entity's determination of whether the employer may receive an extra-judicial waiver of charges, based on a purported connection of the claim to COVID-19.

Because the able and available issue involves a week-by-week determination, this matter is remanded to the Benefits Bureau for further action on those issues as the Benefits Bureau deems appropriate.



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James E. Timberland  
Administrative Law Judge

May 13, 2021  
Decision Dated and Mailed

jet/ol