

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCELI GUTIERREZ
Claimant

APPEAL NO. 08A-UI-04372-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 03/23/08 R: 04
Claimant: Appellant (1)**

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 17A.12(9) – Written Appeal Requirement
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Luceli Gutierrez filed an appeal from the April 15, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on May 23, 2008. Ms. Gutierrez participated. Jean Speisz represented the employer. Spanish-English interpreter Ike Rocha assisted with the hearing. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether the claimant filed an appeal.

If there was an appeal, whether there is good cause to deem the claimant's late appeal timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Luceli Gutierrez established a claim for benefits that was effective March 23, 2008. At the time Ms. Gutierrez established her claim, she provided the following mailing address: 200 E. South Street, Mount Pleasant, IA 52641-2505. On April 15, 2008, Workforce Development mailed a reference 01 decision to Ms. Gutierrez's last known address of record. The greater weight of the evidence in the record establishes that the decision arrived at the address of record in a timely fashion, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 25, 2008. During the month of April, Ms. Gutierrez was in the process of relocating to Grand Island, Nebraska. Ms. Gutierrez made her first trip to Grand Island on or about April 1, but returned to Iowa to collect her belongings on or about April 14. At some point in April, Ms. Gutierrez made contact with a Post Office to change her mailing address. Ms. Gutierrez does not remember when she made the contact with the Post Office.

Ms. Gutierrez did not contact Iowa Workforce Development to update her address until May 5, 2008. The updated address is 573 E. 18th Street, Grand Island, NE 68801-2401. On May 5,

Ms. Gutierrez had gone to a Nebraska Workforce Development Center to apply for unemployment insurance benefits. While Ms. Gutierrez was at the Nebraska Workforce Development Center, she learned that a decision denying benefits had been entered by Iowa Workforce Development. Ms. Gutierrez spoke with an Iowa Workforce Development representative, Jack Ecker, who drafted an appeal form based on Ms. Gutierrez's telephone call. Ms. Gutierrez did not draft or even sign the appeal. Mr. Ecker forwarded the appeal form to the Appeals Bureau, which received the appeal on May 6, 2008.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge first notes the unusual manner by which the claimant's "appeal" was drafted and "delivered" to Iowa Workforce Development.

Unless otherwise provided by statute, a person's request or demand for a contested case proceeding shall be in writing, delivered to the agency by United States postal service or personal service and shall be considered as filed with the agency on the date of the United States postal service postmark or the date personal service is made. Iowa Code section 17A.12(9).

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. Iowa Code section 96.6(2). This statute does nothing to eliminate the requirement that a party submit a written appeal.

Except as otherwise provided by statute or Workforce Development rule, any appeal submitted to Workforce Development shall be considered received by and filed with the division when postmarked, if submitted by mail, or when it is received by the Agency, if submitted by some other means. See 871 IAC 24.35(1). This rule does nothing to eliminate the requirement that a party submit a written appeal.

In the present case, the claimant never in fact filed or submitted an appeal to Iowa Workforce Development. The claimant neither drafted, nor signed, nor delivered an appeal to Iowa Workforce Development. Instead, a Workforce Development representative took it upon himself to effectively bypass the statutory written appeal requirement by receiving an oral, telephonic appeal, reducing it to writing and forwarding it to the Appeal Bureau as if it were a written appeal. The Workforce Development representative's actions were without legal authority. The fact that the claimant is Spanish speaking did not prevent her from filing a written appeal. The Agency routinely handles written appeals from non-English speaking persons.

There has been no appeal filed in this matter. Nonetheless, given that the claimant contacted Iowa Workforce Development on May 5, and may have been led by the Workforce Development representative to believe she had filed an appeal, the administrative law judge will further address the timeliness issue.

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).

The evidence in the record establishes that more than ten calendar days elapsed between April 15 mailing date and May 5, the date the claimant contacted Iowa Workforce Development. 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 greater weight of the evidence in the record establishes that the reason Ms. Gutierrez did not receive the April 15 decision was that she had relocated without updating her address with Iowa Workforce Development. Though Ms. Gutierrez began her move at the beginning of April, she took no steps to alert Iowa Workforce Development of her change of address until more than a month later. In addition, the weight of the evidence fails to establish that the United States Postal Service had anything to do with Ms. Gutierrez missing the decision that had been mailed to her last known address of record. At the appeal hearing, Ms. Gutierrez revealed herself to be an unreliable historian.

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).

DECISION:

The Agency representative's April 15, 2008, reference 01, decision is affirmed. There was no appeal filed in this matter. Accordingly, there was no timely appeal. The decision denying benefits remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw