

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L ROBINSON
Claimant

APPEAL NO. 17A-UI-06977-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CCW LLC
Employer

OC: 05/07/17
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Matthew L. Robinson, the claimant, filed an appeal from a representative's decision dated May 26, 2017, reference 01, which denied unemployment insurance benefits, finding the claimant had voluntarily quit employment on March 29, 2017 for personal reasons. After due notice was issued, a telephone conference hearing was held by telephone on July 27, 2017. At which time the claimant participated personally. The employer participated by Ms. Miranda Kaefring, General Manager of Hu-Hot Grill.

ISSUE:

The issue is whether the claimant filed a timely appeal in this matter.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on May 26, 2017. The disqualification decision was received at the claimant's address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 5, 2017. The appeal was not filed until July 12, 2017, which is after the date noticed on the disqualification decision.

Mr. Robinson chose 1416 9th Street SW, Cedar Rapids, Iowa 52404-2620 as his address of record when he opened the claim for unemployment insurance benefits. Mr. Robinson chose to have his official correspondence delivered to his brother's address because the claimant planned on moving and felt that his brother's address was more permanent. Mr. Robinson intermittently checked at his brother's address to see if he had any mail from Iowa Workforce Development. During this time Mr. Robinson was residing at a different location and also traveling out of town. The claimant did not check his mail for a substantial period of time after he had participated in an adjudicator's call, although he was expecting an unemployment insurance compensation decision.

Mr. Robinson first checked his mail after the adjudicator's call, on June 7, 2017, that date was after the 10-day statutory time limit that was allowed for an appeal to be filed had expired. Mr.

Robinson did not immediately file an appeal or attempt to contact the agency by calling the telephone number provided at the bottom of the decision itself, but instead attempted to open a "new claim" in hopes of avoiding a timeliness issue. Subsequently, the claimant was advised that the proper course of action was to file an appeal on the timeliness issue as well as on the adjudicator's determination that disqualified him from benefits. Mr. Robinson then filed his appeal on May 12, 2017.

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 begins 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).

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, but did not do so. The claimant delayed in checking on his mail at the address of record that he had chosen. Because the claimant delayed in checking his mail on a regular basis, the time period for filing an appeal had lapsed two days before he picked up his mail from his brother's residence. Although other events took place after that date, which further delayed the filing of his appeal, the administrative law judge concludes the claimant's failure to file a timely appeal was due to his failure to check his mail at the address of record he had chosen. The claimant did not check his mail until after the appeal period had expired.

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 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 representative's decision dated May 26, 2017, reference 01, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs