

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIANA L ROBERTSON

Claimant

APPEAL 20A-UI-09953-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ALWAYS BEST CARE OF THE CEDAR
VALLEY**

Employer

OC: 05/24/20

Claimant: Respondent (1/R)

Iowa Code § 96.6(2) - Timeliness of Appeal

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Always Best Care of the Cedar Valley (employer) appealed a representative's August 6, 2020, decision (reference 01) that concluded Tiana Robertson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 5, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Tracy Gray, Director. Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the appeal was filed in a timely manner.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 1, 2019, as a part-time caregiver. The employer paid her \$10.15 per hour. She was hired to work ten to fifteen hours per week. After May 11, 2020, the claimant limited her hours because she did not have childcare or transportation. The employer had work available. The claimant may have been working for another employer.

The claimant filed for unemployment insurance benefits with an effective date of May 24, 2020. Her weekly benefit amount was determined to be \$101.00. The claimant received benefits from May 24, 2020, to the week ending September 26, 2020, for a total of \$1,287.00 in state unemployment insurance benefits after the separation from employment. She received \$237.00 in Pandemic Emergency Unemployment Compensation. She also received \$5,400.00 in

Federal Pandemic Unemployment Compensation for the nine-week period ending July 25, 2020. For a number of weeks, the claimant did not report her earnings from the employer.

An allowance decision was mailed to the employer's last known address of record on August 6, 2020. The decision was received by the employer within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 17, 2020. The appeal was not filed until August 21, 2020, which is after the date noticed on the disqualification decision.

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 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.

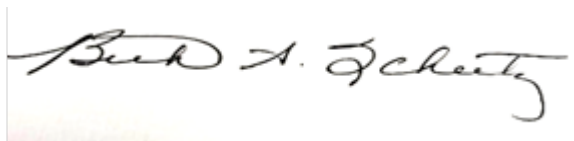
The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 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). Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether the claimant properly reported income to the agency is remanded for determination.

DECISION:

The August 6, 2020, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether the claimant properly reported income to the agency is remanded for determination.



Beth A. Scheetz
Administrative Law Judge

October 7, 2020
Decision Dated and Mailed

bas/scn