

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO M VILLACORTA

Claimant

APPEAL NO: 14A-UI-04332-ST

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 12/22/13

Claimant: Appellant (4-R)

Section 96.6-2 – Timeliness of Appeal
Section 96.4-3 – Able and Available
871 IAC 24.22(2)j(1-3) – Leave of Absence
Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 10, 2014, reference 01, that held he is not eligible for benefits March 9, 2014, because he has been granted a leave of absence that is a voluntary period of unemployment. A telephone hearing was held on May 14, 2014. The claimant, and Interpreter, Anna Pottebaum, participated. Carrie Jaster, HR representative, participated for the employer. Claimant Exhibit A was received as evidence.

The decision was amended to add the employer party to this matter and provide notice of the decision that has been appealed and is now before the Employment Appeal Board.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The department mailed the decision to claimant's address of record on April 10 with an appeal deadline date of April 20, 2014. The claimant signed and submitted an appeal to UI Appeals on April 24, 2014. He offers no reason for the appeal delay.

Claimant was granted a personal medical leave of absence for the period from March 10 to March 21. He was placed on a temporary layoff for the week ending March 29, 2014.

Claimant requested FMLA for his daughter on March 31 and applied through an employer provider (Matrix). It was denied due to lack of doctor certification. Claimant was terminated on April 24.

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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 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 administrative law judge concludes the claimant failed to file a timely appeal.

The claimant did have a reasonable opportunity to file a more timely appeal by noting the deadline date and reading the appeal instructions. The claimant offered no good cause for the appeal delay. The result of the untimely appeal is to deny claimant benefits for the period of his personal leave of absence.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover,

termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The administrative law judge further concludes claimant is eligible for benefits the week ending March 29, 2014 due to a temporary layoff.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge further concludes the April 24, 2014 employment separation is remanded to Claims for investigation and decision. The law judge in this matter did not have jurisdiction to decide the issue.

DECISION:

The department decision dated April 10, 2014, reference 01, is modified. The claimant failed to file a timely appeal and the department decision that denied benefits for a leave of absence is affirmed. Claimant is eligible for benefits for the week ending March 29, 2014 due to a one-week temporary layoff. The April 24, 2014 employment separation issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css