IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RUTLEDGE, KANDEE, S
Claimant

CAPTAIN & CO LTD
Employer

APPEAL NO. 12A-UI-11506-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/07/11
Claimant: Appellant (1)

871 IAC 24.27 - Voluntary Quit from Part-time Employment
Iowa Code Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Kandee Rutledge filed an appeal from the September 7, 2012, reference 05 decision that concluded she had voluntarily quit part-time employment without good cause attributable to the employer. The decision allowed benefits provided Ms. Rutledge was otherwise eligible, but the decision removed benefits based on wages earned through Captain & Company, Ltd. until Ms. Rutledge had earned 10 times her weekly benefit amount. After due notice was issued, a hearing was held on October 18, 2012. The hearing was consolidated with the hearing in Appeal Number 12A-UI-11505-JTT. Ms. Rutledge participated. Jane Scales, Office Manager, represented the employer. Department Exhibits D-1, D-2, D-3 were received into evidence.

ISSUE:

Whether there is good cause to treat Ms. Rutledge's late appeal from the September 7, 2012, reference 05 decision as a timely appeal. There is not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 7, 2012, Iowa Workforce Development mailed a copy of the September 7, 2012, reference 05, decision to Kandee Rutledge's last-known address of record. That decision concluded Ms. Rutledge had on June 27, 2012 voluntarily quit part-time employment without good cause attributable to the employer. The decision allowed benefits provided Ms. Rutledge was otherwise eligible, but the decision removed benefits based on wages earned through Captain & Company, Ltd. until Ms. Rutledge had earned 10 times her weekly benefit amount. The decision was entered in connection with a claim year that started for Ms. Rutledge on August 7, *2011*. Ms. Rutledge received the decision on or about September 12, 2012, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 17, 2012. When Ms. Rutledge received the decision, she did not read the decision in its entirety. Ms. Rutledge skipped the paragraph that talked about appeal rights and the appeal deadline. Ms. Rutledge skipped the paragraph that provided a telephone number she could call if she had any questions about the decision.

On September 10, 2012, Iowa Workforce Development mailed a copy of the September 10, 2012, reference 02 decision to Ms. Rutledge's last-known address of record. That decision was entered in connection with a new claim year that had started for Ms. Rutledge on August 5, *2012*. The decision denied benefits in connection with the same June 27, 2012 separation from Captain & Company, Ltd. The decision indicated that the June 27, 2012 separation had been adjudicated in connection with the prior claim and that the decision on the prior claim remained in effect. Ms. Rutledge received the September 10, 2012, reference 02, decision on or about September 14, 2012, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 20, 2012. When Ms. Rutledge received the decision, she again did not read the decision in its entirety. Ms. Rutledge skipped the paragraph that talked about appeal rights and the appeal deadline. Ms. Rutledge also skipped the paragraph that provided a telephone number she could call if she had any questions about the decision.

On September 24, 2012, Ms. Rutledge went to the Ottumwa Workforce Development Center and completed an appeal form. Ms. Rutledge left the completed appeal form with the Workforce Development Center staff on that day. The Ottumwa Workforce Development Center staff mailed the appeal to the Appeals Section in an envelope that bears a September 24, 2012 postage meter mark and postmark. The Appeals Section received the appeal on September 25, 2012.

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, 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).

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 871 AC 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 871 IAC 24.35(1)(b).

The appeal was filed on September 24, 2012, when Ms. Rutledge delivered her completed appeal form to be the Ottumwa Workforce Development Center staff. The administrative law judge notes this was also the same date that appears on the postage meter mark and the postmark of envelope the Ottumwa Workforce Development Center used to mail the appeal to the Appeals Section.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the September 7, 2012, reference 05 decision and the date this appeal was filed, September 24, 2012. 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 Ms. Rutledge did have a reasonable opportunity to file a timely appeal from the September 7, 2012, reference 05 decision. Ms. Rutledge received that decision on or about September 12. At that point, Ms. Rutledge still had five days in which to file a timely appeal. Ms. Rutledge waited until a week after the September 17, 2012 appeal deadline had passed to contact Workforce Development in response to the two decisions she had received. At that point, Ms. Rutledge figured out that she had missed a fact-finding interview. Contrary to information Ms. Rutledge put on her appeal form, Ms. Rutledge had in fact received the September 7, 2012, reference 05 decision on or about September 12. Ms. Rutledge had also received the September 10, 2012, reference 02 decision on or about September 14.

The delay in filing the appeal was attributable to Ms. Rutledge, to her failure to fully read and timely respond to the September 7, 2012, reference 05 decision, and to her failure to take any steps to file an appeal until September 24, 2012. The delay in filing the appeal was *not* attributable To Workforce Development or to the post office. See Iowa Admin. Code section 871 IAC 24.35(2). The appeal was not timely filed pursuant to Iowa Code section 96.6(2). The September 7, 2012, reference 05 decision is a final agency decision binding upon the parties. As such, the administrative law judge does not have legal jurisdiction to disturb the lower

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 Agency representative's September 7, 2012, reference 05, decision is affirmed as a final agency decision. The appeal in this case was not timely, and the decision of the representative remains in effect. That decision allowed benefits provided the claimant was otherwise eligible, but removed benefits based on wages earned through Captain & Company, Ltd. until the claimant has worked in and been paid wages equal to 10 times her weekly benefit amount.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs