

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN A JAEGER
Claimant

APPEAL NO. 13A-UI-10521-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIoux CITY COMMUNITY SCHOOL DIST
Employer

OC: 07/07/13
Claimant: Appellant (1R)

Section 96.4(5)a & d – Reasonable Assurance
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 26, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on October 16, 2013. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. Official notice is taken of agency records..

ISSUES:

Whether the claimant filed a timely appeal.; and

Whether the claimant is eligible for between academic years.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

On August 26, 2013, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by September 5, 2013, or received by the Appeals Section on that date. The claimant's appeal was filed on September 16, 2013. The claimant did not receive a copy of the decision.

The claimant is an employee of the Sioux City Community School District. She has a contract of employment. The claimant's last day of work for the 2012 school year was May 23, 2013. She is now working again under a new contract of employment, which started on August 15, 2013.

The claimant also works for H & R Block and has wages in her base period from that employer.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 claimant did not receive a copy of the decision. This is likely due to postal or agency error. The appeal will be deemed timely.

The claimant is not eligible for benefits based on her wages from the Sioux City Community School District. What the claimant is seeking are benefits based on her wages from H & R Block. The representative did not consider this when determining the claimant's eligibility for unemployment insurance benefits. This case is therefore remanded for a determination on whether the claimant is eligible for benefits based on wages other than those from the Sioux City Community School District.

DECISION:

The claimant's appeal is deemed timely. The decision of the representative dated August 26, 2013, reference 01, is affirmed. This matter is remanded to the Claims Section for a determination on whether the claimant is eligible for unemployment insurance benefits based on wages from other employers in her base period...

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css