

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUADALUPE S CHESMORE

Claimant

APPEAL NO. 09A-UI-18987-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

Original Claim: 11/01/09

Claimant: Appellant (1)

Section 96.6-2 – Timeliness of Appeal

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 3, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 2, 2010. The claimant participated. The employer participated by Sara Fiedler, claims administrator. The record consists of the testimony of Quadalupe Chesmore. Official notice is taken of agency records.

ISSUE:

Whether the claimant's appeal is timely.

FINDINGS OF FACT:

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

A representative's decision stating that the claimant was not eligible for unemployment insurance benefits was issued on December 3, 2009. The decision was mailed to the claimant's correct address and was received by her on December 11, 2009. In the decision, the representative stated that the decision would become final unless an appeal was postmarked by December 13, 2009, or received by Iowa Workforce Development Appeal Section by that date. Since December 13, 2009, fell on a Sunday, the deadline was extended to December 14, 2009. The claimant did not file her appeal until December 18, 2009. The reason her appeal was late was because the weather prevented her from walking to the local office to file her appeal.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 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 appellant did have a reasonable opportunity to file an appeal postmarked as timely.

The administrative law judge concludes that failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The claimant never attempted to utilize the postal service. There is no evidence of agency error, as the claimant did not attempt to utilize the agency until December 18, 2009, by which time the appeal was late. The claimant testified that the reason her appeal was late was because inclement weather prevented her from walking to the local workforce office. The claimant, however, received the decision on December 11, 2009, and waited for an entire week before she went to the local office. She did not adequately explain why she did not mail her appeal, other than to say she preferred to do it in person so that someone could tell her what to do. The claimant's reasons for failing to file a timely appeal do not fall within the purview of the statute. The appeal is not timely.

Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claimant's claim for unemployment insurance benefits.

DECISION:

The representative's decision dated December 3, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw