

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARK A HECKER
Claimant

APPEAL NO: 19A-UI-03717-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HYPRO INC
Employer

OC: 03/10/19
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 29, 2019, (reference 06) unemployment insurance decision that denied benefits effective March 10, 2019 due to the claimant not being able and available for work. The parties were properly notified about the hearing. A telephone hearing was held on May 28, 2019. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents and reference 06 initial decision. Department Exhibit D-1 and Claimant Exhibit A were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Is the claimant able to work and available for work effective March 10, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An initial unemployment insurance decision (Reference 06) resulting in the claimant being ineligible for benefits effective March 10, 2019 was mailed to the claimant's last known address of record on March 29, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 8, 2019. The initial decision also stated: "If you have questions please call customer service at 866-239-0843". The claimant received the decision within the appeal period. The appeal was not filed until May 6, 2019, which is after the date noticed on the disqualification decision (Department Exhibit 1).

The claimant did not file an appeal sooner because he believed the issue of whether he should be allowed benefits was completed through the unemployment insurance appeal hearing regarding his separation. The claimant referenced that he also had a fact-finding interview and during that interview the claimant discussed able and available with the workforce advisor, who advised the claimant to appeal the decision if he disagreed. The claimant did not contact when he received the initial decision to inquire about the impact it would have on his claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 claimant delayed filing his appeal because he thought he was eligible for benefits based upon a hearing he had that determined his separation from employment was not disqualifying. He did not contact IWD for guidance about the initial decision which concluded he was ineligible for benefits due to not being able and available for work. Based on the evidence presented, the administrative law judge concludes that the claimant's 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 Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

REMAND: The issue of able to and available for work is determined on a week-by-week basis. Therefore, the issue of whether the claimant has become able to and available for work after May 5, 2019 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The March 29, 2019, (reference 06) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND: The issue of able to and available for work is determined on a week-by-week basis. Therefore, the issue of whether the claimant has become able to and available for work after May 5, 2019 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn