

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN L DENNIS
Claimant

APPEAL NO. 11A-UI-00510-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/27/09
Claimant: Appellant (5)

Iowa Code Section 96.4(4) – Minimum Earnings Requirement
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Dawn Dennis filed an appeal from the April 21, 2011, reference 03, decision that denied benefits effective December 27, 2009 based on an Agency conclusion that she had not been paid insured wages of at least \$250.00 either during or after the previous benefit year in which she had received benefits. After due notice was issued, a hearing was held on June 15, 2011. Ms. Dennis participated. Exhibits A and B and Department Exhibits D-1 through D-9 were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 11A-EUCU-00511-JTT.

ISSUE:

Whether there is good cause to treat Ms. Dennis' late appeal from the April 21, 2011 disqualification decision as a timely appeal. There is.

Whether Ms. Dennis had not been paid insured wages of at least \$250.00 either during or after the previous benefit year in which she had received benefits and therefore was ineligible for benefits effective December 27, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 21, 2011, Iowa Workforce Development mailed a copy of the April 21, 2011, reference 03, decision to Dawn Dennis' last-known address of record. The decision denied benefits effective December 27, 2009 based on an Agency conclusion that she had not been paid insured wages of at least \$250.00 either during or after the previous benefit year in which she had received benefits. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 1, 2011. Ms. Dawn did not receive the reference 03 decision until the Appeals Section provided it to her on June 15, 2011.

On May 20, 2011, Workforce Development mailed a copy of the May 20, 2011, reference 04 decision that said Ms. Dennis was overpaid \$10,374.00 in benefits for the 26 weeks ending

June 26, 2010, based on the decision entered April 21, 2011, which disqualified Ms. Dennis for benefits in the second benefit year. The reference 04 decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 30, 2011. Ms. Dennis received the overpayment decision in a timely manner, prior to the deadline for appeal. On May 26, 2011, Ms. Dennis went to her local Workforce Development Center, completed an appeal form, and delivered the completed appeal form to the Center staff. The Appeals Section received the appeal from the overpayment decision on May 27, 2011 and treated it as an appeal also from the April 21, 2011, reference 03 disqualification decision.

Ms. Dennis established a claim for benefits that was effective December 28, 2008 in response to being laid off from Gazette Communications on November 23, 2008. Ms. Dennis received benefits in connection with the claim. When the benefit year expired, Ms. Dennis established a new claim in the new benefit year that started for her on December 27, 2009. Ms. Dennis had not had any additional employment since the November 2008 lay-off from Gazette Communications. Ms. Dennis received unemployment insurance benefits in the new claim year for the period of December 27, 2009 through the week that ended June 26, 2010, when she discontinued her claim for benefits.

On June 28, 2010, Ms. Dennis returned to work for Gazette Communications in a different position than the one she had held before. Ms. Dennis had had no other employment between the November 2008 separation and her start in the new position in June 2010. Ms. Dennis continues in the new position with Gazette Communications at this time.

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 evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the April 21, 2011, reference 03 disqualification decision 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 not have a reasonable opportunity to file a timely appeal from the April 21, 2011, reference 03 disqualification decision because she did not receive the decision. Ms. Dennis' first knowledge of a reference to the decision was in the overpayment decision mailed to her on May 20, 2011. Ms. Dennis filed her appeal from the overpayment decision on May 26, 2011, prior to the May 30, 2011 deadline. Ms. Dennis had still not received a copy of the April 21, 2011, reference 03 decision and did not receive a copy until June 15, 2011. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Workforce Development error or United States Postal Service error. See 871 IAC 24.35(2). There is good cause to treat the appeal as timely. The administrative law judge has jurisdiction to rule on the merits of the appeal.

Iowa Code section 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at

least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

"Insured work" is employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act. 871 IAC 24.1(62).

The evidence in the record establishes that Ms. Dennis did not meet the \$250.00 minimum earnings requirement to be eligible for benefits in connection with the second claim year that started on December 27, 2009. Ms. Dennis continued to not meet this minimum earnings requirement until after she discontinued her claim for benefits with the week that ended June 26, 2010. Thereafter, Ms. Dennis met the minimum earnings requirement through the new work at Gazette Communications that she started on June 28, 2010. Ms. Dennis was not eligible for the benefits she received for the period of December 27, 2009 through June 26, 2010 in connection with the claim year that started December 27, 2009.

DECISION:

The claimant's appeal was timely. The Agency representative's April 21, 2011, reference 03, decision is modified as follows. The claimant did not meet the \$250.00 minimum earnings requirement to be eligible for benefits in connection with the second claim year and was not eligible for the benefits she received for the period of December 27, 2009 through June 26, 2010 *in connection with the claim year that started December 27, 2009*. The claimant did meet the minimum earnings requirement *after* she started new work on June 28, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs