

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA I CORONADO

Claimant

APPEAL NO. 16A-UI-10754-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROCK SERVICES LLC

Employer

OC: 08/07/16

Claimant: Appellant (1/R)

Iowa Code Section 96.5(2)(a) – Disciplinary Suspension

Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Maria Coronado filed a late appeal from the August 24, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Coronado was suspended on August 5, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on October 18, 2016. Ms. Coronado participated. Saul Castor represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-10755-JTT. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether Ms. Coronado's appeal from the August 24, 2016, reference 01, decision was timely or whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Coronado established an original claim for benefits that was effective August 7, 2016. At the time Ms. Coronado established her claim, she provided a Texas address as the address to which agency correspondence should be sent. Ms. Coronado provided the Texas address even though she was residing in Iowa at the time she established the claim. The address in Texas was for Ms. Coronado's permanent residence. Ms. Coronado did not make any arrangements to have anyone collect or forward the mail received at her Texas address of record.

Ms. Coronado established her original claim for benefits in response to being placed on a disciplinary suspension on August 5, 2016. After Ms. Coronado filed her original claim for unemployment insurance benefits, and before she participated in a fact-finding interview set for August 23, 2016, she returned to the employment. At the time of the fact-finding interview,

Ms. Coronado told the claims deputy that she was staying in Iowa, but wanted her copy of the deputy's decision to be mailed to her address of record in Texas and did not want to change the address of record. At the time of the fact-finding interview, the claims deputy told Ms. Coronado to expect to receive a decision in the mail in the days that followed.

On August 24, 2016, Iowa Workforce Development mailed a copy of the August 24, 2016, reference 01, decision to Ms. Coronado at her address of record in Texas. The decision disqualified Ms. Coronado for benefits and relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Coronado was suspended on August 5, 2016 for misconduct in connection with the employment. The decision stated that an appeal from the decision must be postmarked by September 3, 2016 or be received by the Appeals Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal period would be extended to the working day. September 3, 2016 was a Saturday. The next working day was Monday, September 5, 2016. The weight of the evidence in the record establishes that the August 24, 2016, reference 01, decision arrived at Ms. Coronado's Texas address of record in a timely manner, prior to the appeal deadline. However, Ms. Coronado was not in Texas at the time and had made no arrangements to have the decision forwarded to her in Iowa. Ms. Coronado did not file an appeal from the reference 01 decision by the extended September 5, 2016 appeal deadline.

On September 6, 2016, Iowa Workforce Development mailed another decision to Ms. Coronado's Texas address of record. The September 6, 2016, reference 02, decision denied benefits to Ms. Coronado effective August 7, 2016, based on an agency conclusion that Ms. Coronado was not partially unemployed. The September 6, 2016, reference 02, decision stated that an appeal from the decision must be postmarked by September 16, 2016, or received by the Appeals Section by that date. The weight of the evidence in the record establishes that the September 6, 2016, reference 02, decision arrived at Ms. Coronado's Texas address of record in a timely manner, on or before September 11, 2016.

On September 8, 2016, Ms. Coronado left Iowa and traveled to her home in Texas. Ms. Coronado arrived at her home in Texas on September 11, 2016. The weight of the evidence in the record establishes that the reference 01 and the reference 02 decisions were both waiting for Ms. Coronado in her mailbox when she arrived at her home on September 11, 2016.

During the week of September 11-17, 2016, Ms. Coronado established an additional claim for benefits that was deemed effective September 11, 2016.

On October 4, 2016, Ms. Coronado accessed the Workforce Development website and filed an online appeal from the September 6, 2016, reference 02, decision. In the appeal, Ms. Coronado listed September 11, 2016 as the original claim date, the decision date, and as the date she received the reference 02 decision. The Appeals Bureau treated Ms. Coronado's appeal from the September 6, 2016, reference 02 decision as also an appeal from the August 24, 2016, reference 01, decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

Ms. Coronado's appeal from both decisions was filed on October 4, 2016, when Ms. Coronado accessed the Workforce Development website and completed an online appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the August 24, 2016, reference 01, decision and the date Ms. Coronado filed her appeal from the decision. Indeed, there was a 41-day lapse between the mailing date of the decision and the filing of the appeal. 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).

Ms. Coronado proved to be an unreliable witness at the appeal hearing. Ms. Coronado's testimony at the appeal hearing contained several internal inconsistencies. Ms. Coronado initially insisted she had not received either the reference 01 or reference 02 decision. Later in the hearing, it became apparent that Ms. Coronado had in fact received both decisions and had a hardcopy of each in hand. At another point, Ms. Coronado testified that she received the August 24, 2016 decision on August 7, 2016. That date was the original claim date and preceded the mailing date of the August 24, 2016, reference 01, decision. At another point, Ms. Coronado testified that she received both decisions on October 10, 2016, but that was six days after she filed an appeal that referenced receiving the September 6, 2016, reference 02, decision on September 11, 2016. The weight of the evidence establishes that the September 11, 2016 date is the most reliable date concerning when Ms. Coronado actually came into physical possession of both the reference 01 and reference 02 decision. September 11 is the date Ms. Coronado arrived home in Texas. It is reasonable to conclude that the September 6, 2016, reference 02, decision would take five days to arrive in Texas. Ms. Coronado provided September 11 as the date she received the reference 02 decision when she filed her appeal.

The record shows that Ms. Coronado had a reasonable opportunity to file an appeal from the August 24, 2016, reference 01, decision if she had not elected to have the decision sent to an address in Texas. Ms. Coronado requested that the decision be mailed to her address of record in Texas even though she was not there to receive it and had made no arrangements to have anyone receive the decision or forward the decision to her. Workforce Development mailed the decision to the correct address of record. Ms. Coronado's delayed possession of the decision was entirely attributable to Ms. Coronado. Under the circumstances, the administrative law judge cannot conclude that Ms. Coronado was denied a reasonable opportunity to file an appeal by the extended September 5, 2016 appeal deadline.

Even if the administrative law judge were to conclude that Ms. Coronado did not have a reasonable opportunity to file an appeal from the August 24, 2016, reference 01, decision by the extended September 5, 2016 appeal deadline, the evidence still establishes an untimely appeal based on unreasonable delay on the part of Ms. Coronado from September 11, 2016, when she came into physical possession of both decisions and October 4, 2016, when she filed her appeal. No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

The evidence in the record establishes an untimely appeal from the August 24, 2016, reference 01, decision. The untimeliness of the appeal was attributable to Ms. Coronado and was not attributable to Iowa Workforce Development or the United States Postal Service. See 871 IAC 24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the lower August 24, 2016, reference 01, decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979). The August 24, 2016, reference 01, decision that disqualified Ms. Coronado for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Coronado was suspended on August 5, 2016 for misconduct in connection with the employment, remains in effect.

Ms. Coronado asserts that she may have earned sufficient wages to requalify for benefits after the August 5, 2016, disqualifying suspension by earning 10 times her weekly benefit amount. This matter will be remanded to the Benefits Bureau for determination of whether the claimant has in fact earned sufficient wages from insured work following the August 5, 2016 disciplinary suspension to requalify for benefits. The remand should also address whether there was an additional, subsequent separation event and whether that event disqualified Ms. Coronado for benefits or relieved the employer of liability for future benefits based on work performed on or after August 6, 2016.

DECISION:

The August 24, 2016, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Coronado was suspended on August 5, 2016 for misconduct in connection with the employment, remains in effect.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has requalified for benefits subsequent to the August 5, 2016 disciplinary discharge. The remand should also address whether there was an additional, subsequent separation event and whether that event disqualified the claimant for benefits or relieved the employer of liability for future benefits based on work performed on or after August 6, 2016.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs