

The September 12, 2005, reference 01, decision that denied benefits was mailed to Laurie Smith's last-known address of record on Monday, September 12, 2005. At all relevant times, Ms. Smith resided at 152 – 50th Avenue, Apartment 1C, in East Moline. Ms. Smith received her mail in a secured mailbox and was the only person who retrieved her mail. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 22, 2005.

As some point in the days following the fact-finding interview, Ms. Smith contacted the Davenport Workforce Development Center to advise that she had not received a decision. Ms. Smith recalls that she spoke with a gentleman. The Workforce Development Center staff advised Ms. Smith that the decisions came from Des Moines. Ms. Smith did not ask whether a decision had been entered and was not advised whether a decision had been entered.

From Monday, September 19 through Sunday, October 9, Ms. Smith participated in a partial hospitalization treatment program to address mental health issues. The treatment program ran from 8:30 a.m. to 4:30 p.m. daily. These hours corresponded with the hours of the Davenport Workforce Development Center, and Ms. Smith had no contact with the Workforce Development Center while she was involved in the treatment program.

On October 10, Ms. Smith spoke with “Jan” at the Davenport Workforce Development Center. This was Ms. Smith’s second contact with the Davenport Workforce Development Center after the fact-finding interview. Ms. Smith advised that she still had not received a copy of the decision regarding her eligibility for benefits. “Jan” advised Ms. Smith that a decision had been entered, that the decision denied benefits, and that Ms. Smith would need to come to the Workforce Development Center and submit an appeal. Ms. Smith did not immediately follow those instructions. “Jan” further advised she would make certain another notice of decision was mailed to Ms. Smith.

From Tuesday, October 11 through noon on Friday, October 21, Ms. Smith again participated in the partial hospitalization treatment program and again had no contact with Workforce Development during that period. On October 21, Ms. Smith went to the Davenport Workforce Development Center and completed an appeal of the September 12, 2005, reference 01, decision. The Center staff forwarded the appeal to the Appeals Bureau on the same day. The appeal was not filed until October 21, 2005, which was after the date noticed on the September 12, 2005, reference 01, decision.

Both parties presented evidence on the merits of the appeal.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Smith’s late appeal should be deemed timely. It does not.

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 the decision is mailed. 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). Any decision mailed by the Unemployment Insurance Division is considered as having been given to the addressee to whom it is directed on the date of the document, unless otherwise indicated by the facts. 871 IAC 24.35(3).

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 is 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). An appeal submitted by any means other than mail is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. 871 IAC 24.35(1)(b). The submission of an appeal beyond the statutory or regulatory deadline will be considered timely if the evidence establishes that the delay in submission was due to Agency error or misinformation or to delay or other action of the United States Postal Service. 871 IAC 24.35(2).

The evidence in the record establishes that Ms. Smith was denied a reasonable opportunity to submit her appeal within the statutory 10-day deadline, due to either Agency error or delay or other action of the United States Postal Service. The question is whether Ms. Smith's *delay* in submitting her appeal after she spoke with Workforce Development staff on October 10 was *reasonable*. It was not.

No submission shall be considered timely if the delay in filing was unreasonable, based on the circumstances in the case. 871 IAC 24.35(2)(c). Workforce Development staff advised Ms. Smith on October 10 that she had been denied benefits and would have to appeal the decision. Ms. Smith was aware when she spoke with Workforce Development staff that she would be entering a treatment program that would last several days. Ms. Smith did not file her appeal until 11 days later. The period of delay was itself longer than the 10-day deadline for appeal set forth in the statute. See Iowa Code section 96.6(2). The administrative law judge concludes that the delay in filing the appeal was unreasonable and, therefore, that the appeal should not be considered timely. The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 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. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The Agency representative's September 12, 2005, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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