

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY B HELMERS
Claimant

OSCEOLA COMMUNITY HOSP INC
Employer

APPEAL 20A-UI-16052-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/17/19
Claimant: Respondent (1R)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On May 18, 2020, the employer appealed the unemployment insurance decision dated February 17, 2020 (reference 04) that allowed benefits based on claimant's ability to work. A hearing was scheduled for January 22, 2021. Claimant participated personally employer. Employer participated through human resource director Emily Van Kekerix. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?

FINDINGS OF FACT:

The administrative law judge finds that: On February 17, 2020, Iowa Workforce Development (IWD) mailed employer a reference 04 unemployment insurance decision that allowed benefits effective January 12, 2020, based on claimant's ability to work. The decision states that an appeal is due by February 27, 2020. Employer received the decision within the appeal period. Employer did not file an appeal within the appeal period.

At that time, claimant was receiving long term disability benefits in the gross amount of \$1,514.94.

In March 2020, human resource director Emily Van Kekerix contacted Iowa Workforce Development to report that claimant was receiving long term disability benefits. Van Kekerix was told that the Benefits Bureau would review the information and issue a decision on whether the disability benefits were deductible from unemployment insurance benefits. No decision was issued and Van Kekerix continued to contact the agency. She was eventually advised to file an appeal, which she did on May 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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

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.

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. Bd. 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 unemployment insurance 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 administrative law judge concludes that failure to follow the clear written instructions 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).

The decision finding claimant able to work remains in effect. However, the issue raised by employer is something new—whether claimant's long term disability benefits are deductible from claimant's unemployment insurance benefits. That matter will be remanded for an initial decision.

DECISION:

The unemployment insurance decision dated February 17, 2020 (reference 04) that allowed benefits based on claimant's ability to work is affirmed. The appeal was untimely, and claimant is allowed benefits, provided he is otherwise eligible.

REMAND:

The issue of whether the long term disability benefits claimant was receiving in the gross amount of \$1,514.94 per month is deductible from the unemployment insurance benefits claimant received for the six weeks ending February 22, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial decision.



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February 11, 2021
Decision Dated and Mailed

cal/mh