

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILL M WINGERTER

Claimant

APPEAL NO. 09A-UI-11206-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 02/15/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Will Wingerter, filed an appeal from a decision dated March 9, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 20, 2009. The claimant participated on his own behalf. The employer, West Liberty Foods, participated by Human Resources Generalist Nikki Bruno. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on March 9, 2009. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 19, 2009. The appeal was not filed until August 4, 2009, which is after the date noticed on the decision.

Mr. Wingerter was out of the state for medical treatment from March 9 until July 19, 2009. When he returned he waited until July 26, 2009, to open his mail and discover the decision in this case. He waited another ten days before filing the appeal.

REASONING AND CONCLUSIONS OF LAW:

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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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. 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The claimant did not make arrangements for someone to open and process his mail while he was out of state for an extended period of time, even though the envelope in which the decision was mailed specifically states it dated material and to open immediately. But the claimant did open the mail eventually and still waited ten days before filing an appeal. The administrative law judge concludes he did not act in a timely manner to file the present appeal after first opening the decision and it may not be accepted as timely.

DECISION:

The decision of the representative dated March 9, 2009, reference 01, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is disqualified for unemployment benefits.

Bonny G. Hendricksmeyer
Administrative Law Judge

Decision Dated and Mailed

bgh/css