

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER H KOPP
Claimant

APPEAL NO. 14A-UI-00712-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

OC: 12/08/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated December 30, 2013, reference 01, which held claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for February 11, 2014. The claimant responded to the hearing notice and the administrative law judge called the number twice. Each time a voicemail message said that the mailbox had not been opened and there was no way to leave a message. Neither representative of the employer was available when called by the administrative law judge. A detailed message was left for each representative and neither called prior to the closing of the record at 10:40 a.m.

The claimant called at 10:41 a.m. and was instructed to hang up so that the administrative law judge could call him using the Clear2there recording system. When the number was dialed, voicemail again picked up and there was no way to leave a message. The administrative law judge waited until 10:55 a.m. before again closing the record since the claimant did not call back.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

On December 30, 2013, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by January 9, 2014, or received by the Appeals Section on that date. The claimant's appeal was filed on January 21, 2014.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 have a reasonable opportunity to file an appeal postmarked as timely. The failure to file a timely appeal was due to the claimant's error and not due to agency error or error of the United States postal service. Since the claimant failed to file a timely appeal, the administrative law judge does not have subject matter jurisdiction to consider the merits of the claimant's claim for unemployment insurance benefits.

DECISION:

The claimant's appeal is not timely. The representative's decision dated December 30, 2013, reference 01, remains in full force and effect.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs