

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON J SCHNEDLER
Claimant

APPEAL NO. 18A-UI-08263-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

OC: 07/09/17
Claimant: Appellant (1)

Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Jason J. Schnedler filed an appeal from a representative's unemployment insurance decision dated July 18, 2018, reference 02, which denied unemployment insurance benefits as of June 17, 2018 finding that the claimant requested and was granted a leave of absence and was therefore not available for work. After due notice was issued, an in-person hearing was held in Burlington, Iowa on October 11, 2018. Claimant participated. Although duly notified, the employer did not participate.

ISSUE:

At issue in this matter is whether Jason Schnedler filed a timely appeal as required by law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's address of record on July 18, 2018 and received by the claimant within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 28, 2018. Mr. Schnedler did not file his appeal until August 3, 2018 which is beyond the ten day statutory limit. Claimant has provided no good cause reason for late filing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure 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 871 IAC 24.35(2). 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 representative's unemployment insurance decision dated July 18, 2018, reference 02, is affirmed. The claimant failed to file a timely appeal and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn