

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNY L MURPHY

Claimant

APPEAL 22A-UI-09815-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OAKHILL ASSISTED LIVING CORP

Employer

OC: 03/15/20

Claimant: Respondent (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The employer, Oakhill Assisted Living Corporation, filed an appeal to the March 30, 2021 (reference 02) initial decision that concluded was temporarily laid off due to a lack of work. After proper notice, a telephone hearing was held on May 9 2022. The hearing was held together with Appeal 22A-UI-09817-JC-T. The claimant, Jenny L. Murphy, did not attend the hearing. The employer participated through Rebecca Cain, manager. Official notice of the administrative record was taken. Department Exhibit 1 was admitted.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence, the administrative law judge finds: Claimant established a claim for unemployment insurance benefits with an effective date of March 15, 2020.

An initial decision concluding claimant was temporarily laid off effective February 21, 2021 was mailed to the employer's address of record on March 30, 2021. Employer received the initial decision within the appeal period. The initial decision contained a warning that an appeal was due by April 9, 2021.

Usually, Rebecca Cain handled mail from IWD. However, she was out of the office for a period for six weeks with surgery and Jan Cain handled the appeal. The appeal was filed on November 1, 2021 (Department Exhibit 1). Employer furnished no additional evidence as to why employer's appeal was delayed over six months after the due date. No evidence was presented that employer's delay in filing the appeal was due to agency or postal service error. Jan Cain did not participate in the hearing.

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the appeal is timely.

Iowa law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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. 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).

In this case, the employer received the initial decision which allowed benefits to claimant, and concluded claimant was temporarily unemployed. The decision was dated March 30, 2021, with a due date of April 9, 2021. Employer filed its appeal on November 1, 2021 for unknown reasons. The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

Based on the evidence presented, 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).

DECISION:

The March 30, 2021 (reference 02) initial decision is affirmed. The appeal was not timely filed and is therefore dismissed.



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May 23, 2022
Decision Dated and Mailed

jlb/scn