

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA H ARAGON
Claimant

APPEAL NO. 12A-UI-14626-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 09/30/12
Claimant: Appellant (1-R)

871 IAC 24.23(10) – Leave of Absence
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Maria Aragon filed an appeal from the November 1, 2012, reference 01, decision that denied benefits effective September 30, 2012 based on an agency conclusion that she had requested and been approved for a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on January 11, 2013. Ms. Aragon participated and presented additional testimony through Judy James. Employer representative Eloisa Baumgartner was not available at the number the employer had provided for the hearing and did not participate in the hearing. Spanish-English interpreter Ike Rocha assisted with the hearing. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to treat Ms. Aragon's late appeal as a timely appeal. The administrative law judge concludes there is not good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Aragon is a Spanish-speaking person. Ms. Aragon established a claim for unemployment insurance benefits that was effective September 30, 2012. Ms. Aragon interacted with the staff at the Des Moines Workforce Center to establish the claim for benefits. Ms. Aragon lives in Perry, but has a car. On October 31, 2012, Ms. Aragon participated in a fact-finding interview held by telephone. A Spanish-English interpreter assisted with the hearing. Ms. Aragon understood that the purpose of the fact-finding interview was to determine her eligibility for unemployment insurance benefits in the context of her being off work from Tyson Fresh Meats, Inc. During the fact-finding interview, the Workforce Development representative told Ms. Aragon that she should receive a decision determining her eligibility for unemployment insurance benefits within three days.

On November 1, 2012, Workforce Development mailed a copy of the November 1, 2012, reference 01 decision to Ms. Aragon's address of record. Ms. Aragon received the decision no later than November 3, 2012. Though Ms. Aragon does not read English, Ms. Aragon knew the

correspondence she received on November 3 was from Workforce Development and that it was the decision resulting from the fact-finding interview. The decision Ms. Aragon received on November 3, denied benefits effective September 30, 2012 based on an agency conclusion that she had requested and been approved for a leave of absence, was voluntarily unemployed, and was not available for work. The decision indicated that Ms. Aragon's appeal from the decision had to be postmarked or received not later than November 11, 2012. The decision also indicated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. November 11, 2012 was a Sunday and the next working day was Monday, November 12, 2012.

After Ms. Aragon received the decision on November 3, she did nothing with it for a month. On or about December 3, Ms. Aragon spoke to a friend of a friend, Judy James. Ms. James is bilingual. Ms. James translated the November 3, 2012, reference 01 decision for Ms. Aragon and told Ms. Aragon that she needed to file an appeal. Ms. Aragon then waited eight days, to December 11, 2012, to travel with Ms. James to the Des Moines Workforce Development Center. Ms. Aragon and Ms. James decided they did not want to wait the necessary hour or so to speak to a bilingual, Spanish-speaking Workforce Advisor. Ms. James assisted Ms. Aragon with completing an appeal form, which they left with the Workforce Development staff that day. On the appeal form, Ms. Aragon or Ms. James documented that Ms. Aragon had received the decision on November 1.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The evidence in the record establishes 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. Ms. Aragon received the November 1, 2012, reference 01 decision no later than November 3, 2012. She knew at the time she received the decision that it was the determination she had previously been told would be arriving within three days of the October 31 fact-finding interview. At that point, Ms. Aragon had at least nine days in which to access assistance in reading and understanding the decision and in which to file a timely appeal. The administrative law judge finds not credible Ms. Aragon's assertion that she had no family, friends or anyone else in Perry who could assist her with translation of the document. In any event, Ms. Aragon could have accessed staff at the Des Moines Workforce Development Center for assistance, but did not do so. Instead, Ms. Aragon did nothing for a whole month. Then, weeks after the appeal was due, Ms. Aragon finally spoke to a friend of a friend, who translated the decision for her. Though Ms. Aragon knew at that point that the appeal was long past due, she then waited another eight days, until December 11, before she took steps to file an appeal by going to the Des Moines Workforce Development.

No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

Even if the administrative law judge had concluded the language barrier created a hurdle to filing an appeal by the November 12, 2012 extended deadline, there would still not be good cause to deem the late appeal timely. Ms. Aragon failed to take *any* action on the correspondence for a whole month. Ms. Aragon then delayed another eight days after she had the appeal translated before she finally filed an appeal on December 11, 2012. Ms. Aragon's delay was unreasonable.

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. See 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 Agency representative's November 1, 2012, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

This matter is remanded to the Claims Division for adjudication of the claimant's *separation* from the employment and any other issues the Claims Division deems appropriate.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs