

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MADISON T ALLEN
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL NO. 21A-UI-00476-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(5) – Between Academic Terms Disqualification

STATEMENT OF THE CASE:

The claimant filed a late appeal from the October 30, 2020, reference 02, decision that denied benefits effective June 21, 2020, based on the between academic terms disqualification provision set forth at Iowa Code section 96.4(5). After due notice was issued, a hearing was held on February 2, 2021. The claimant, Madison Allen, participated personally and was represented by attorney Matthew Bachop. Rhonda Wagoner represented the employer. Exhibits 1, A, D-1, D-2, D-6, D-8 and D-9 were received into evidence.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 30, 2020, Iowa Workforce Development mailed the October 30, 2020, reference 02, decision to the claimant's Ankeny last-known address of record. The decision was mailed from Des Moines. The decision denied benefits effective June 21, 2020, based on the between academic terms disqualification provision set forth at Iowa Code section 96.4(5). The decision stated that an appeal must be postmarked by November 9, 2020 or be received by the Appeal Section by that date. The decision included clear and concise instructions for filing an appeal. The decision included a customer service telephone the claimant could use to contact Iowa Workforce Development if she had questions regarding the decision. The weight of the evidence points to the decision arriving at the address of record in a timely manner, most likely within a couple days of the October 30, 2020 mailing date. The claimant advises that the envelope in which the decision arrived had no United States Postal Service markings on it indicating that the USPS had misdirected or delayed delivery of the correspondence. The claimant did not have the envelope at the time of the appeal hearing. The claimant is a high school student and the address of record is her mother's residence. The claimant was 17 years old, about to turn 18 years old, at the time IWD mailed the decision to her address of record. The claimant's mother is in charge of the mail at the residence. The claimant offered no

testimony from her mother regarding the date the October 30, 2020, reference 02, decision was received at the family's Ankeny home.

On November 12, 2020, Iowa Workforce Development mailed a November 12, 2020 Assessment for PUA Benefits to the claimant's same address of record. The PUA decision included a November 23, 2020 deadline for appeal. The claimant's mother handed the PUA decision to the claimant on November 21, 2020.

On November 23, 2020, the claimant filed an online appeal shortly after speaking with an IWD representative. The Appeals Bureau received the appeal on November 23, 2020 and treated the appeal as both a timely appeal from the PUA decision and a late appeal from the October 30, 2020, reference 02, decision.

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, subsections 10 and 11, 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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(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). One 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 weight of the evidence in the record establishes an untimely appeal from the October 30, 2020, reference 02, decision. Reason, common sense, and the weight of the evidence indicate that the October 30, 2020, reference 02, decision arrived at the claimant's Ankeny address of record in a timely manner, prior to the deadline for appeal. The claimant has presented insufficient evidence to establish otherwise. The claimant's mother, not the claimant, collected the correspondence from the mailbox, but the claimant elected not to have her mother testify regarding the date the decision was received at the family home. The envelope in which the decision arrived bore no indication that the correspondence had been misdirected or delayed prior to arriving at this destination. The claimant did not make the envelope, or a copy, available for the administrative law judge's consideration. It is unlikely that a decision mailed from Des Moines on October 30, 2020 would take more than a day or two to get to an Ankeny address and highly unlikely it would take three weeks, as the claimant suggests. The weight of the evidence indicates that the appellant did have a reasonable opportunity to file a timely appeal, but delayed filing the appeal until the later appeal deadline applicable to the PUA decision. 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 Iowa Administrative Code rule 871-24.35(2). There is not good cause to treat the late appeal as a timely appeal. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to make a determination on the merits. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the October 30, 2020, reference 02, decision was untimely. The decision that denied benefits effective June 21, 2020, based on the between academic terms disqualification provision set forth at Iowa Code section 96.4(5), remains in effect.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

February 22, 2021
Decision Dated and Mailed

jet/kmj