

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARNA K GREEN

Claimant

APPEAL NO. 10A-UI-02767-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE ALVERNO HEALTH CARE FACILITY

Employer

OC: 01/17/10

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 9, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2010. Claimant failed to respond to the hearing notice and did not participate. Official notice is taken of agency records, specifically the date of the representative's decision; the postmarked envelope containing the claimant's appeal; and the claimant's appeal.

ISSUE:

Whether the claimant's appeal was timely.

FINDINGS OF FACT:

The administrative law judge, having reviewed the agency records, makes the following findings of fact:

A representative's decision was issued on February 9, 2010, stating that the claimant was not eligible for unemployment insurance benefits. In that decision, the claimant was advised that any appeal must be postmarked by February 19, 2010, or received by Iowa Workforce Development Appeal Section by that date. February 19, 2010, occurred on a Friday. The claimant's appeal letter was postmarked on February 20, 2010.

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 claimant did not respond to the hearing notice and did not participate in the hearing in this case. There is no evidence that the claimant was deprived of a reasonable opportunity to assert an appeal in a timely manner or that there was delay or error on the part of the United States Postal Service or the agency. Accordingly, the claimant's appeal is not timely and the administrative law judge is without authority to change the representative's decision.

DECISION:

The decision of the representative dated February 9, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs