

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ACHOK AGWOK
Claimant

APPEAL NO. 08O-UI-04129-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/18/07 R: 02
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Achok Agwok filed an appeal from the December 24, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on June 18, 2008. Ms. Agwok participated. The employer was not available at the number the employer had provided for the hearing and did not participate. Arabic-English Interpreter Lakdar Rabahi assisted with the hearing. Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUE:

Whether there is good cause to deem the claimant's late appeal timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Achok Agwok is a non-native English speaker with limited English skills. Ms. Agwok participated in the fact-finding interview on December 21, 2007. Workforce Development made an Arabic-English interpreter available for the fact-finding interview. The Workforce Development representative's December 24, 2007, reference 01, decision was mailed to Achok Agwok's last-known address of record on December 24, 2007. Mr. Agwok received the decision in a timely fashion, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 3, 2008. The decision also provided a telephone number Ms. Agwok could call if she had questions regarding her appeal rights. Though Ms. Agwok had received the decision in a timely fashion, Ms. Agwok waited until after the appeal deadline to contact Workforce Development with her questions regarding her right to appeal. An Agency representative instructed Ms. Agwok that she would need to file an appeal if she desired to challenge the decision denying benefits. Ms. Agwok took no further actions at that time to file an appeal.

On February 25, 2008, Workforce Development mailed Ms. Agwok a reference 04 decision that Ms. Agwok was overpaid unemployment insurance benefits. The overpayment decision indicated that it was based on the prior decision that Ms. Agwok had voluntarily quit her

employment from Tyson Fresh Meats without good cause attributable to the employer. Ms. Agwok received the overpayment decision in a timely fashion, prior to the deadline for appeal. The overpayment decision carried a March 6, 2008 deadline for appeal. Ms. Agwok contacted an English speaking, but non-Arabic speaking friend, who drafted an appeal for Ms. Agwok and faxed the appeal to the Appeals Section. Ms. Agwok's faxed appeal of the overpayment decision was received by the Appeals Section on March 6, 2008. The Appeals Section treated Ms. Agwok's appeal from the February 25, 2008 overpayment decision as an appeal also from the December 24, 2007, reference 01, decision denying benefits.

The appeal hearing was initially set for May 13, 2008, but could not go forward because the claimant had not made appropriate arrangements to participate. The appeal hearing was re-set for May 29, 2008. On May 29, the administrative law judge discerned the appeal notice lacked reference to the timeliness of appeal issue. Ms. Agwok asserted her right to formal notice of the timeliness issue and the hearing was rescheduled for June 18, 2008. Notice of the June 18 hearing was mailed to Ms. Agwok on June 4, 2008. On June 2, the Appeals Section mailed Department Exhibits D-1, D-2 and D-3 to Ms. Agwok. Ms. Agwok received the exhibits on June 3. Despite the fact that Workforce Development had previously made an interpreter available to Ms. Agwok at the fact-finding interview, Ms. Agwok took no steps between June 3 and June 18 to contact Workforce Development, or anyone else, for assistance in understanding the exhibits she had received.

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). See also Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). 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). 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).

In this case, the appeal was filed on March 6, 2008, the date it was received at Iowa Workforce Development.

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 from the December 24, 2007, reference 01, decision.

Even if it the administrative law judge had concluded that Ms. Agwok did not have a reasonable opportunity, due to the language issue, to appeal the December 24 decision prior to the January 3 deadline, the evidence shows that Ms. Agwok unreasonably delayed filing her appeal until March 6, 2008. The evidence shows that Ms. Agwok has the ability, despite the language issue, to interact with the Agency in a timely, meaningful fashion. The evidence indicates that Ms. Agwok was aware that the Agency had resources available to assist her in addressing the language issue. The evidence indicates that Ms. Agwok unreasonably failed to follow through on the advice and assistance she received from the Workforce Development representative in January with regard to filing an appeal of the December 24 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 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 December 24, 2007, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css