

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY K FOLEY
Claimant

APPEAL NO: 13A-UI-08402-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOONE COMMUNITY SCHOOL DISTRICT
Employer

OC: 06/09/13
Claimant: Appellant (1-R)

Section 96.4-5-B – Reasonable Assurance
Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 24, 2013, reference 02, that held she is not eligible for benefits June 9, 2013, because she had reasonable assurance of continuing employment. A telephone hearing was held on August 21, 2013. The claimant participated. Paulette Newbold, Director of Bus Services, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on June 24, 2013 with an appeal deadline date of July 4 (Holiday) that is extended to July 5. The claimant submitted an appeal to her local Workforce office on July 9, 2013.

Since claimant was temporarily living in New Hampton, she used her current address of record where her parents reside, and let them receive/open her mail. Claimant's mother received the department decision and read it to claimant. She forwarded it to claimant that is the reason for the appeal delay.

Claimant worked full time at Woodward-Granger and a temporary as needed job for the employer. The department issued a decision on July 2, 2013, reference 01, that allowed claimant benefits by reason of her employment separation at Woodward-Granger. The employer did not appeal.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

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 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.

The administrative law judge concludes the claimant failed to file a timely appeal.

The claimant did have a reasonable opportunity to file a more timely appeal by noting the deadline date and reading the appeal instructions. The claimant offered no good cause for the appeal delay as it was an family matter of mail forwarding not attributable to the department or the postal service

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Although the claimant filed an untimely appeal from the decision in this matter she received a favorable decision that allowed her benefits. The department issued a July 2, 2013 decision that claimant is eligible for benefits by reason of her employment separation from her full-time employment at Woodward-Granger on May 31, 2013. The Department should not have locked claimant's claim due to the decision in this matter. While the employer in this case is not liable for benefits, this matter is remanded to Claims to unlock claimant's claim. Claimant is eligible to receive benefits by reason of this employment separation.

DECISION:

The department decision dated June 24, 2013, reference 02, is affirmed. The claimant failed to file a timely appeal, and the department decision she is not eligible due to reasonable assurance on June 9, 2013 from the employer remains in force and effect. Benefits are allowed claimant based on the department July 2, 2013, reference 01, decision and this matter is remanded to Claims to unlock claimant's claim. The employer in this case is not liable.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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