

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TESHONDER R HOUSE
Claimant

APPEAL NO. 17A-UI-10029-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REACH FOR YOUR POTENTIAL INC
Employer

OC: 08/27/17
Claimant: Respondent (1/R)

Iowa Code Section 96.4(3) – Able & Available, Partial Unemployment
Iowa Code Section 96.7(2)(a) – Employer Liability
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the September 18, 2017, reference 01, decision that allowed benefits to the claimant, effective August 27, 2017, provided he was otherwise eligible and held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was able to work, available for work, but partially unemployed from Reach for Your Potential, Inc. After due notice was issued, a hearing was held on October 17, 2017. Claimant Teshonder House did not register a telephone number for the hearing and did not participate. Stuart Kunkel represented the employer. Exhibit 1 was received into evidence.

On October 17, 2017, Mr. House submitted a letter, dated October 11, 2017, in lieu of participating in the hearing. The letter addressed issues related to the employment, but not the timeliness of the employer's appeal. The administrative law judge marked the letter as Exhibit A. The administrative law judge did not receive Exhibit A into evidence because the hearing only addressed timeliness of the employer's appeal and did not reach the issues concerning the employment.

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 September 18, 2017, Iowa Workforce Development mailed the September 18, 2017, reference 01, decision to the employer at the employer's last-known address of record. The decision allowed benefits to the claimant, effective August 27, 2017, provided he was otherwise eligible and held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was able to work, available for work, but partially unemployed from Reach for Your Potential, Inc. The decision stated that the employer's appeal must be postmarked by September 28, 2017, or be received by the Appeals Section by that date. The employer received the decision in a timely manner, prior to the deadline for appeal.

On September 27, 2017, Stuart Kunkel, Human Resources Director, finished drafting the appeal. On October 2, 2017, the employer faxed the appeal to the Appeals Bureau. The Appeals Bureau received the appeal that same day.

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 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 employer's appeal was filed on October 2, 2017, when the Appeals Bureau received the appeal that the employer faxed that same day.

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 employer/appellant did have a reasonable opportunity to file a timely appeal.

The evidence in the record establishes an untimely appeal from the September 18, 2017, reference 01, decision. The employer received the decision in a timely manner, but delayed transmitting the appeal to the Appeals Bureau until October 2, 2017, after the appeal deadline. The late filing of the appeal was attributable to the employer internal operations and was not attributable either to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the decision from which the employer appealed. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Because the issues of whether the claimant is able to work, available for work, and/or partially unemployed are to be determined on a week-by-week basis. The employer failed to file a timely appeal from the August 27, 2017, reference 01, decision does not bar the employer from seeking adjudication of those issues for the period beginning October 2, 2017, the date when the appeal was filed. Accordingly, this matter will be remanded to the Benefits Bureau for adjudication of the able & available issues, the partial unemployment, and the employer liability issues pertaining to the period beginning October 2, 2017.

DECISION:

The employer's appeal from the September 18, 2017, reference 01, decision was untimely. The decision that allowed benefits to the claimant, effective August 27, 2017, provided he was otherwise eligible and held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was able to work, available for work, but partially unemployed from Reach for Your Potential, Inc., remains in effect for the period of August 27, 2017 through the benefit week that ended September 30, 2017.

This matter is remanded to the Benefits Bureau for adjudication of the able & available, partial unemployment, and employer liability issues for the period beginning October 2, 2017.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn