

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANTONIO TERRELL
Claimant

THOMAS L CARDELLA & ASSOCIATES INC
Employer

APPEAL NO. 22R-UI-01603-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Antonio Terrell, filed a late appeal from the August 14, 2020, reference 03, decision that denied benefits effective May 17, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on February 9, 2022. The claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. There were four appeal numbers set for a consolidated hearing: 22R-UI-01603-JTT, 22R-UI-01604-JTT, 22R-UI-01605-JTT, and 22R-UI-01606-JTT. Exhibits A, B and C were received into evidence. Exhibit A is the July 2, 2021 online appeal. Exhibit B is the claimant's December 9, 2021 request for rehearing directed to the Employment Appeal Board in Hearing Number 21B-UI-15038. Exhibit C is the claimant's appeal form faxed to the Employment Appeal Board and received by the Employment Appeal Board on September 10, 2021 in Hearing Number 21B-UI-15038. The administrative law judge took official notice of the following Agency administrative records: DBIN, KPYX, KCCO, NMRO, the reference 03 through 07 decisions, and the Claim Detail documenting a January 23, 2021 decision denying Pandemic Unemployment Assistance (PUA) benefits.

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 August 14, 2020 Iowa Workforce Development mailed the August 14, 2020, reference 03, decision to the claimant's Ottumwa last-known address of record. The reference 03 decision denied benefits effective May 17, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. The referenced 03 stated that the decision would become final unless an appeal was postmarked by August 24, 2020 or was received by the Appeals Section by that

date. The claimant received the reference 03 in a timely manner, prior to the August 24, 2020 deadline for appeal. The claimant did not take steps to file an appeal from the decision by the appeal deadline or any point prior to July 2, 2021. On June 23, 2021, Iowa Workforce Development mailed three overpayment decisions to the claimant. Each overpayment decision was prompted by the August 14, 2020, reference 03, decision. Each overpayment decision included a July 3, 2021 deadline for appeal. On July 2, 2021, the claimant completed and transmitted an online appeal from the reference 05 overpayment decision. The claimant referenced in the appeal the circumstances surrounding a leave of absence he commenced on May 17, 2020. The Appeals Bureau received the appeal on July 2, 2021 and treated it also as a late appeal from the reference 03 decision and a timely appeal from the other two overpayment decisions.

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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal. The evidence establishes that the claimant received the reference 03 decision in a timely manner, had a reasonable opportunity to file an appeal by the August 24, 2020 applicable appeal deadline, but unreasonably delayed filing the appeal to July 2, 2021. The period of delay exceeded 10 months. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause under the law to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the August 14, 2020 decision. 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 August 14, 2020, reference 03, decision was untimely. The decision that denied benefits effective May 17, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work remains in effect.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

March 7, 2022
Decision Dated and Mailed

jet/mh