

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SAMANTHA L SALCEDO-SEGURA
Claimant

APPEAL NO. 20A-UI-00497-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE MUTUAL INSURANCE CO
Employer

OC: 09/22/19
Claimant: Appellant (1)

Iowa Code Section 95.5(5) – Pension Deduction
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Samantha Salcedo-Segura filed a late appeal from the December 5, 2019, reference 04, decision that denied benefits for the period of October 20, 2019 through December 14, 2019, based on the deputy's conclusion that Ms. Salcedo-Segura received a lump sum pension that was deductible from her unemployment insurance benefit eligibility. After due notice was issued, a hearing was held on February 4, 2020. Ms. Salcedo-Segura participated and presented additional testimony through David Kirsch. The employer did not register a telephone number for the appeal hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-00498-JTT. Exhibit A and Department Exhibits D-1 through D-10 were received into evidence.

ISSUE:

Whether there is good cause to treat the late appeal as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 5, 2019, Iowa Workforce Development mailed the December 5, 2019, reference 04, decision to claimant Samantha Salcedo-Segura at her last-known address of record. The reference 04 denied benefits for the period of October 20, 2019 through December 14, 2019, based on the deputy's conclusion that Ms. Salcedo-Segura received a lump sum pension that was deductible from her unemployment insurance benefit eligibility. The decision stated that an appeal from the decision must be postmarked by December 15, 2019 or be received by the Appeals Bureau by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. December 15, 2019 was a Sunday and the next working day was Monday, December 16, 2019.

On December 10, 2019, Iowa Workforce Development mailed the December 10, 2019, reference 05, decision to Ms. Salcedo-Segura at the same last-known address of record. The reference 05 decision held that Ms. Salcedo-Segura was overpaid \$2,400.00 in unemployment insurance benefits for six weeks between October 20, 2019 and November 30, 2019, based on

the December 5, 2019 pension deduction decision. The reference 05 decision stated that an appeal from the decision must be postmarked by December 20, 2019 or be received by the Appeals Bureau by that date.

Both decisions arrived at Ms. Salcedo-Segura's address of record in a timely manner, prior to their respective appeal deadline dates. During the period when the decisions were mailed to Ms. Salcedo-Segura, Ms. Salcedo-Segura was without a permanent residence and was receiving her mail at her great grandmother's residence. That address was the address Ms. Salcedo-Segura had provided to Iowa Workforce Development as the address to which correspondence should be directed. Ms. Salcedo did not take steps to collect the December 5, 2019, reference 04, decision or to file an appeal from that decision by the December 15, 2019 appeal deadline stated on the reference 04 decision or by the Monday, December 16, 2019 extended appeal deadline.

On December 19, 2019, Ms. Salcedo-Segura collected her mail that she had directed to her great grandmother's home. Ms. Salcedo-Segura's friend, David Kirsch, accompanied Ms. Salcedo-Segura on December 19, 2019. The mail Ms. Salcedo-Segura collected on that day included the December 5, 2019, reference 04, decision and the December 10, 2019, reference 05, decision. Ms. Salcedo-Segura read the decisions at that time. Ms. Salcedo-Segura did not take steps to file an appeal from the December 10, 2019, reference 05 overpayment decision by the December 20, 2019 appeal deadline. Ms. Salcedo-Segura did not take steps to file an appeal from either decision prior to January 16, 2020. On or about January 15, 2020, Ms. Salcedo-Segura participated in a re-employment services and evaluation assessment (RESEA) and completed a required RESEA class. During that contact with a IowaWORKS representative, Ms. Salcedo-Segura mentioned the decisions she had received and had misplaced. On January 16, 2020, Ms. Salcedo-Segura filed an online appeal from the December 5, 2019, reference 04, pension deduction decision. The Appeals Bureau treated the appeal as also from the December 10, 2019 overpayment decision.

Ms. Salcedo-Segura suffers from mental health issues that intermittently impact her cognitive lucidity. However, at multiple times during the period between December 5, 2019 and December 20, 2019 and January 16, 2020, Ms. Salcedo-Segura was cognitively lucid and able to attend to personal business. Ms. Salcedo-Segura specifically recalls being lucid and able to function on December 20, 2019. As mentioned above, Ms. Salcedo-Segura's appeal followed her participation in and successful completion of re-employment services. Ms. Salcedo-Segura advises that she was not hospitalized in connection with her mental health issues at any point between December 5, 2019 and January 16, 2020.

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).

Substantially more than ten calendar days elapsed between the December 5, 2019 mailing date of the reference 04 pension deduction decision and the January 16, 2020 online appeal. 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 Ms. Salcedo-Segura 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 weight of the evidence in the record establishes that Ms. Salcedo-Segura's January 16, 2020 appeal from the December 5, 2019, reference 04, pension deduction decision was an untimely appeal. The weight of the evidence establishes that the decision arrived at the address of record in a timely manner, prior to the December 16, 2019 extended appeal deadline, but that Ms. Salcedo-Segura did not collect the decision until December 19, 2019. After Ms. Salcedo-Segura reviewed the decision on that date, she elected to take no steps to

file an appeal from the reference 04 decision until January 16, 2020, when she filed the online appeal. Ms. Salcedo-Segura presented no medical documentation to support the notion that she was incapable of functioning and attending to personal business during the period of December 5, 2019 to December 16, 2019. The evidence indicates that Ms. Salcedo-Segura had readily available assistance from her friend and relatives during that period. Based on the evidence in the record, the administrative law judge concludes that Ms. Salcedo-Segura had a reasonable opportunity to file an appeal from the December 5, 2019, reference 04, decision by the December 16, 2019 extended appeal deadline, but did not take steps to file an appeal by the extended deadline. Even if the administrative law judge had concluded there was good cause for not filing the appeal by the December 16, 2019 extended deadline, the evidence would not provide good cause for Ms. Salcedo-Segura delaying her appeal to January 16, 2020. 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). Ms. Salcedo-Segura testified that she had periods of cognitive lucidity in December 2019 and January 2020. Ms. Salcedo-Segura's contact with the IowaWORKS representative to schedule and complete the re-employment services requirement is evidence that Ms. Salcedo-Segura was able to function and attend to personal business prior to January 16, 2020. None of the delay in filing the appeal was attributable to Iowa Workforce Development or the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2) (regarding good cause attributable to Iowa Workforce Development and/or the United States Postal Service). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the December 5, 2019, reference 04, pension deduction 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 December 5, 2019, reference 04, decision is affirmed. The claimant's appeal was untimely. The decision that denied benefits for the period of October 20, 2019 through December 14, 2019, based on the deputy's conclusion that the claimant received a lump sum pension that was deductible from her unemployment insurance benefit eligibility, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn