

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J ANDERSON
Claimant

APPEAL NO: 12A-UI-02993-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERE & COMPANY
Employer

OC: 07/12/09
Claimant: Appellant (1)

Section 96.5-7 – Vacation Pay
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Timothy J. Anderson (claimant) appealed a representative's August 12, 2010 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits for the benefit week ending June 19, 2010, due to the receipt of vacation pay attributable to that week from Deere & Company (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on April 10, 2012. This appeal was consolidated for hearing with one related appeal, 12A-UI-02994-DT, regarding a related overpayment decision; that appeal does not explicitly name the employer as a party. Prior to the hearing being held, the administrative law judge and the parties concurred that no hearing was necessary and that a decision could be made on the record. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on August 12, 2010. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 22, 2010. The appeal was not filed until it was faxed on March 26, 2012, which is after the date noticed on the disqualification decision. The appeal was made at that time in response to the resulting overpayment decision issued on March 16, 2012, the decision which is the subject of 12A-UI-02994-DT.

The claimant had not appealed the decision regarding the receipt of vacation pay in August 2010, and in fact in August 2010 had tendered a check to the Agency in the amount of \$423.00 as payment for the overpayment of his regular weekly benefit amount for the week of June 19, 2010. (He had neglected to include a repayment of the additional \$25.00 economic stimulus

payment he had been paid for that same week.) However, the Agency failed to attempt to negotiate the claimant's August 2010 check until March 16, 2012. While the Agency records currently reflect credit for payment on March 16, 2012 in the amount of \$423.00, showing a remaining balance of \$25.00, the check negotiated by the Agency was subsequently rejected by the claimant's financial institution on March 21 as being too old. Presumably, the Agency records will subsequently be updated to show that the \$423.00 has not been paid.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The issuance of a subsequent resulting overpayment decision does not reopen the time for filing an appeal from the initial underlying disqualification decision. *Beardslee*, supra. The appellant did have a reasonable opportunity to file a timely appeal from the initial disqualification in August 2010.

The administrative law judge concludes that failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, *Beardslee*,

supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The representative's August 12, 2010 decision (reference 03) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Benefits are denied for the benefit week ending June 19, 2010.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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