

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA H TAYLOR
Claimant

APPEAL NO. 11A-UI-05876-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP
Employer

OC: 10/25/09
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(d) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Teresa Taylor filed an appeal from the December 3, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on June 10, 2011. Ms. Taylor participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 11A-UI-05877-JTT and 11A-UI-07181-JTT. Exhibits D-1 through D-13 were received into evidence.

ISSUE:

Whether Ms. Taylor filed a timely appeal from the December 3, 2009, reference 01 decision or whether there is good cause to treat a late appeal from that decision as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Taylor established a claim for unemployment insurance benefits that was effective October 25, 2009 and received benefits. The benefits Ms. Taylor received included \$1,740.00 in benefits for the five-week period between October 25, 2009 and November 28, 2009. On December 3, 2009, Iowa Workforce Development mailed a copy of the December 3, 2009, reference 01, decision to Ms. Taylor's last-known address of record. Ms. Taylor received the decision in a timely manner, prior to the deadline for appeal. The decision denied benefits based on an Agency conclusion that Ms. Taylor had voluntarily quit employment due to a non-work-related medical issue. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 13, 2009. Ms. Taylor did not file an appeal in response to receiving the reference 01 decision.

On December 8, 2009, a Workforce Development representative entered a reference 02 decision that allowed benefits effective November 2, 2009, provided Ms. Taylor met all other eligibility requirements. The decision was based on a conclusion that Ms. Taylor was able and available for work. This was a separate and distinct issue from whether Ms. Taylor had separated from the employment for a reason that disqualified her for benefits or whether she

had requalified for benefits by fulfilling the terms of the December 3, 2009, reference 01 decision regarding the separation.

As part of the proceedings leading to entry of the December 8, 2009, reference 02 decision, Ms. Taylor provided a December 3, 2009 note from her health care provider indicating that she was released to return to the workforce. Ms. Taylor had not provided such documentation to Workforce Development prior to that time. Ms. Taylor had never returned to the employer to offer her services after recovering from the condition that took her off work.

The December 8, 2009, reference 02 decision was later nullified by the June 28, 2010, reference 03 decision because the reference 02 had been entered without notice to the employer and without opportunity for the employer to be heard.

On August 9, 2010, a Workforce Development representative entered a reference 04 decision that allowed benefits effective October 25, 2009, provided Ms. Taylor met all other eligibility requirements. The decision was based on a conclusion that Ms. Taylor was able and available for work. This was a separate and distinct issue from whether Ms. Taylor had separated from the employment for a reason that disqualified her for benefits or whether she had requalified for benefits by fulfilling the terms of the December 3, 2009, reference 01 decision regarding the separation. The reference 04 decision was entered after the employer was given an opportunity to participate and after the employer indicated, through Talx, that it was not contesting the claim for benefits. In connection with the proceedings leading to entry of the August 9, 2010, reference 04 decision, Ms. Taylor resubmitted the December 3, 2009 letter from her health care provider indicating that she was released to the workforce. Ms. Taylor has still not provided documentation to indicate that she was released to work prior to December 3, 2009.

The August 9, 2010, reference 04 decision was later nullified by the April 19, 2011, reference 07 decision, based on an Agency conclusion that the decision was entered in error. The reference 07 decision carried an April 29, 2011 deadline for appeal. Ms. Taylor did not appeal the reference 07 decision.

On October 27, 2010, a Workforce Development representative entered a reference 05 decision that allowed benefits, provided Ms. Taylor was otherwise eligible, based on a conclusion that she had separated from employer Accu Steel, Inc., on September 30, 2010, for a non-disqualifying reason.

On December 7, 2010, a Workforce Development representative entered a reference 06 decision that allowed benefits, provided Ms. Taylor was otherwise eligible. The decision further stated that a decision regarding Ms. Taylor's June 3, 2009 separation from American Home Shield Corporation "was made on a prior claim and that decision remains in effect." This language was erroneous, given that the prior decision in question, the December 3, 2009, reference 01 decision, had *denied* benefits.

On April 20, 2011, a Workforce Development representative entered a reference 08 decision that allowed benefits effective November 29, 2009, provided Ms. Taylor was otherwise eligible, but denied, in the Explanation of Decision, benefits for the period of October 25, 2009 through November 28, 2009. The decision referenced that Ms. Taylor had not been released from the doctor and that she was not able and available for work during the period for which benefits were denied. The reference 08 decision was based on the conclusion that Ms. Taylor was able and available for work effective November 29, 2009. The decision carried an April 30, 2011 deadline for appeal. Ms. Taylor received the decision in a timely manner, prior to the deadline for appeal.

On April 25, 2011, a Workforce Development representative entered a reference 09 decision that Ms. Taylor was overpaid \$1,740.00 for the five weeks ending November 28, 2009. The decision indicated that the overpayment decision was “due to the decision dated 12-03-09 on an able and available issue with American Home Shield Corp.” This language was erroneous on two counts. First, the December 3, 2009, reference 01 decision had not addressed whether Ms. Taylor was able and available for work, but had instead addressed whether she had separated from the employer for a disqualifying reason. Second, it was the April 20, 2011, reference 08 decision, regarding Ms. Taylor’s ability to work and availability for work, that had prompted the overpayment decision. The reference 08 decision had indicated on its face: “A determination of overpayment will be made.” Ms. Taylor received the decision in a timely manner, prior to the May 5, 2011 deadline for appeal.

On April 29, 2011, Ms. Taylor mailed her appeal from the April 25, 2011, reference 09 overpayment decision. Ms. Taylor attached a copy of the overpayment decision. The mailed appeal was postmarked April 29, 2011. When the Appeals Section received the appeal letter on May 3, 2011, the Appeals Section, based on the language of the overpayment decision, treated the appeal as also an appeal from the December 3, 2009, reference 01 decision. Only later did it become clear that the appeal should also be treated as an appeal from the April 20, 2011, reference 08 decision and it was added to the appeal.

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, subsection 10, 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 weight of the evidence in the record establishes that there was no appeal from the December 3, 2009, reference 01 decision until the appeal from the overpayment decision. The appeal was filed on April 29, 2011, the date of the postmark on the envelope in which the appeal was mailed.

No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

The evidence in the record establishes that much 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 from the December 3, 2009, reference 01 decision. That decision denied benefits and was never overturned or nullified by the Agency. While the claimant's ability to work and availability for work played out over the course of more than a year, with decisions that were entered and later nullified, none of this addressed the separation from the employment. The first time the separation from employment re-emerges as an issue is in the December 7, 2010, reference 06 decision that references the prior adjudication, but gets the effect of the prior adjudication dead wrong. At that point, it had been a year since the entry of the December 03, 2009, reference 01 decision that disqualified Ms. Taylor for benefits based on the separation from American Home Shield Corporation.

The administrative law judge concludes that failure to file a timely appeal from the December 3, 2009, reference 01 decision within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Any error involving the separation issue did not occur until a year after the reference 01 decision issued. Any earlier error regarding decisions entered in regard to the claimant ability to work and availability for work did not touch the separation

issue. The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The Agency representative's December 3, 2009, reference 01, decision is affirmed. The appeal in this case was not timely, and the reference 01 decision that disqualified the claimant for benefits based on the separation from American Home Shield Corporation remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs