

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HIFZA M ALI
Claimant

DICKSON INDUSTRIES INC
Employer

APPEAL NO. 21A-UI-05410-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
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 filed a late appeal from the January 14, 2021, reference 01, decision that denied benefits effective September 20, 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 April 23, 2021. Claimant participated. Allison Hogan represented the employer and presented additional testimony through Wilder Melendez. Urdu-English interpreter Muncera Syed of CTS Language Link assisted with the hearing. There were three appeal numbers set for a consolidated hearing: 21A-UI-05410-JTT, 21A-UI-05411-JTT and 21A-UI-05414-JTT. The parties waived formal notice on question of whether the claimant's appeal from the reference 01 decision was a timely appeal. Exhibits 1 through 7, A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A, and the reference 01, 02, and 03 decisions.

ISSUE:

Whether the appeal from the January 14, 2021, reference 01, decision 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 January 14, 2021, Iowa Workforce Development mailed the January 14, 2021, reference 01, decision to the claimant's Des Moines last-known address of record. The claimant received the decision in a timely manner, prior to the deadline for appeal. The decision denied benefits effective September 20, 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 decision stated that the decision would become final unless an appeal was postmarked by January 24, 2021 or was received by the Appeal Section by that date. The decision also stated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. January 24, 2021 was a Sunday and the next working day was Monday, January 25, 2021. The reference 01 decision included clear

and concise instructions for filing an appeal. The reference 01 decision also included the Iowa Workforce Development customer service number and Appeals Bureau number if the claimant had questions or needed assistance in filing an appeal. The claimant did not file an appeal by the extended January 25, 2021 deadline.

The claimant is a native Urdu speaker. The claimant's adult son is fluent in English. The claimant resides with her son and had immediate access to her son's assistance at all relevant times.

On February 16, 2021, Iowa Workforce Development mailed the February 16, 2021, reference 02, decision to the claimant. The reference 02 decision denied benefits effective December 6, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. The reference 02 decision included a February 26, 2021 appeal deadline. On February 18, 2021, the claimant completed and transmitted an online appeal from the reference 02 decision. The Appeals Bureau treated the appeal from the February 16, 2021, reference 02, decision as also an appeal from the January 14, 2021, reference 01, decision.

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). 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).

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 established an untimely appeal from the January 14, 2021, reference 01, decision that denied benefits effective September 20, 2020. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the January 25, 2021 extended appeal deadline, but did not take steps to file an appeal until February 18, 2021. There is no reason to believe that reference 01 decision took more than a day or two to reach the claimant. The claimant concedes she received the decision in mid-January 2021. The claimant demonstrated the ability to file a timely appeal by promptly filing an appeal from the February 16, 2021, reference 02, decision upon receipt of the reference 02 decision. The delay in filing the appeal from the January 14, 2021, reference 01, decision was unreasonable. The delay was attributable to the claimant and was not attributable to Iowa Workforce Development or the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the January 14, 2021, reference 01, 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 January 14, 2021, reference 01, decision was untimely. The decision that denied benefits effective September 20, 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, shall stand. Because the February 16, 2021, reference 02, decision addresses the able and available issues for the period beginning December 6, 2020, the reference 01 decision applies to the period of September 20, 2020 through December 5, 2020.



James E. Timberland
Administrative Law Judge

August 24, 2021
Decision Dated and Mailed

jet/scn