

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORAIN FALLIN

Claimant

APPEAL NO. 20A-UI-01949-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCREYNOLDS ENTERPRISES LTD

Employer

OC: 12/01/19

Claimant: Respondent (1/R)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary & Partial Unemployment
Iowa Code Section 96.7(2)(a)(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a late appeal from the December 30, 2019, reference 03, decision that allowed benefits to the claimant effective December 1, 2019, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on March 20, 2020. Claimant, Loraine Fallin, did not provide a telephone number for the hearing and did not participate. Andrew McReynolds represented the employer. Exhibits 1 through 7 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO and WAGE-A.

ISSUE:

Whether there is good cause to treat the employer's late appeal from the December 30, 2019 decision as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 30, 2019, Iowa Workforce Development mailed the December 30, 2019, reference 03, decision to the employer's last-known address of record. The decision allowed benefits to the claimant effective December 1, 2019, provided the claimant was otherwise eligible, and held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. The decision stated that an appeal from the decision must be postmarked by January 9, 2020 or be received by the Appeal Section by that date. The decision arrived at the employer's address of record in a timely manner, prior to the deadline for appeal. Andrew McReynolds, President and owner, reviewed a portion of the decision when he received it at his business, did not read the entirety of the decision, assumed there was no need to file an appeal from the decision, and took no steps to file an appeal by the January 9, 2020 appeal deadline. Mr. McReynolds cites a

particular sentence in the decision as justification for not promptly filing an appeal from the decision. The sentence states as follows:

EMPLOYER INFORMATION:

SINCE THE CLAIMANT IS NOT PERFORMING SERVICES IN THE SAME PATTERN OF EMPLOYMENT AS IN THE BASE PERIOD, YOUR ACCOUNT WILL NOT BE RELIEVED OF CHARGES.

The employer took no action to file an appeal from the December 30, 2019, reference 03, decision until after the employer received the quarterly State of Charges that Iowa Workforce Development mailed to the employer on February 7, 2020. The Statement of Charges contained a charge for \$436.54 in benefits paid to the claimant for the calendar quarter that ended on December 31, 2019. Toward the end of February 2020, the employer mailed an appeal from the December 30, 2019, reference 03, decision to the Appeals Bureau. The employer mailed the appeal by certified mail. The appeal is postmarked February 27, 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).

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).

The evidence in the record establishes an untimely appeal from the December 30, 2019, reference 03, decision. The employer received the decision in a timely manner and had a reasonable opportunity to file an appeal from the decision by the January 9, 2020 appeal deadline. Mr. McReynolds asserts that the sentence in the decision that said his company account would not be relieved of charges is confusing and/or misleading. The sentence is not confusing or misleading. Mr. McReynolds elected not to read the sentence in its entirety when he reviewed the decision. The employer's late filing of the appeal was attributable to the employer's delay in responding to the decision and was not attributable either to Iowa Workforce Development or the United States Postal Service. Accordingly, 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 does not have legal authority to disturb the December 30, 2019, reference 03, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

The December 30, 2019, reference 03, decision remained in effect for the period of December 1, 2019 through the benefit week that ended February 22, 2020.

Based on the February 27, 2020 appeal, and the week-by-week determination applicable to able and available issues, this matter will be remanded to the Benefits Bureau for determination of whether the claimant has been able to work, available for work, and/or partially unemployed during the period beginning February 23, 2020.

Based on the employer's assertion that the claimant has not accurately reported her wages to Iowa Workforce Development, this matter will also be remanded to the Investigations & Recovery Unit of the Integrity Bureau for further review of the claim such as that bureau deems appropriate.

DECISION:

The December 30, 2019, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect for the period of December 1, 2019 through the benefit week that that ended February 22, 2020.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work, available for work, and/or partially unemployed during the period beginning February 23, 2020.

Based on the employer's assertion that the claimant has not accurately reported her wages to Iowa Workforce Development, this matter is also remanded to the Investigations & Recovery Unit of the Integrity Bureau for further review of the claim such as that bureau deems appropriate.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

March 27, 2020
Decision Dated and Mailed

jet/scn