

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MORENO, MARIA, F
Claimant

APPEAL NO. 10A-UI-14714-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHARLES INC
CHARLES FURNITURE
Employer

OC: 06/06/10
Claimant: Appellant (1)

Iowa Code Section 96.4(3) - Able & Available
Iowa Code Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 31, 2010, reference 02, decision that denied benefits based on an Agency conclusion the claimant had voluntarily quit the employment without good cause attributable to the employer. After due notice was issued, a hearing was held by telephone conference call on December 14, 2010. Claimant participated. Ron Fanning represented the employer. Spanish-English Interpreter Anna Pottebaum assisted with the hearing. The hearing in this matter was consolidated with the hearing in appeal number 10A-UI-14713-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUE:

Whether there is good cause to treat the claimant's late appeal from the August 31, 2010, reference 02, decision as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 31, 2010, Workforce Development mailed a copy of two decisions to the claimant at her last known address of record. The first was the August 31, 2010, reference 01, decision that denied benefits based on an Agency conclusion that the claimant was not able to work between June 20, 2010 and July 17, 2010. The second decision was the August 31, 2010, reference 02, decision that denied benefits based on an Agency conclusion that the claimant had voluntarily quit without good cause attributable to the employer on July 19, 2010. The decisions were directed to the correct street address, but may have contained an erroneous lot number. Regardless, the claimant received both decisions in a timely manner, prior to the deadline for appeal. Each decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 10, 2010. The claimant is non-English-speaking. The claimant had her English-speaking daughter read the decisions to her and the claimant understood that both decisions denied unemployment insurance benefits. The claimant did not

pursue an appeal from either decision at that time, but instead focused on her search for new employment. On October 26, 2010, the claimant went to the Council Bluffs Workforce Development Center, obtained assistance in completing an appeal form, and delivered the completed appeal form to Workforce Development Center staff. The Appeals Section received the completed appeal the same day by fax.

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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal 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). 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 August 31, 2010, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css