

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAKEENA M PENDLETON
Claimant

APPEAL NO. 21A-UI-05512-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SINGLESPEED BREWING CO
Employer

OC: 03/15/20
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 27, 2021, reference 01, decision that denied benefits effective October 4, 2020, based on the deputy's conclusion that the claimant was unduly restricting her availability for work. After due notice was issued, a hearing was held on April 26, 2021. The claimant participated. The employer did not provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-05513-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, KCCO, KPYX, the reference 01 and 02 (o.c. 3/15/20) decisions, the reference 01 (o.c. 3/14/21) decision, and the application for PUA benefits.

ISSUE:

Whether the appeal from the January 27, 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: The claimant established an original claim for benefits that was effective March 15, 2020. On January 27, 2021, Iowa Workforce Development mailed the January 27, 2021, reference 01 (o.c. 3/15/20) decision to the claimant's Waterloo last-known address of record. The reference 01 decision denied benefits effective October 4, 2020, based on the deputy's conclusion that the claimant was unduly restricting her availability for work. The decision stated that the decision would become final unless an appeal was postmarked by February 6, 2021 or was received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. February 6, 2021 was a Saturday and the next working day was Monday, February 8, 2021. The claimant received the reference 01 decision in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file an appeal by the February 6, 2021 extended appeal deadline.

On February 16, 2021, Iowa Workforce Development mailed a reference 02 (o.c. 3/15/20) decision to the claimant's last-known address of record. The reference 02 decision denied benefits effective November 29, 2020, based on the deputy's conclusion that the claimant was not partially unemployed from Singlespeed Brewing Company. The reference 02 decision included a February 26, 2021 deadline for appeal.

On February 18, 2021, the claimant completed and transmitted an online appeal from the reference 02 decision. The Appeals Bureau received the appeal on February 18, 2020 and treated the appeal as also a late appeal from the January 27, 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). One 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 establishes an untimely appeal from the January 27, 2021, reference 01 (o.c. 3/15/20) decision. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the extended February 8, 2021 appeal deadline, but did not file an appeal until February 18, 2021. The late filing of the appeal was attributable to the claimant and not attributable to IWD or to 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 from the January 27, 2021, reference 01 (o.c. 3/15/20) decision was untimely, the administrative law judge lacks jurisdiction to disturb that 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 27, 2021, reference 01, decision was untimely. The decision that denied benefits effective October 4, 2020, based on the deputy's conclusion that the claimant was unduly restricting her availability for work, remains in place. However, because the February 16, 2021, reference 02, decision addressed the period beginning November 29, 2020, the effect of the reference 01 decision is limited to the period of October 4, 2020 through November 28, 2020.



James E. Timberland
Administrative Law Judge

August 31, 2021
Decision Dated and Mailed

jet/mh