

REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.6 provides:

2. *Initial determination.* ... 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.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive - but not conclusive - evidence of the date of mailing.

The rule of the Department provide that

26.4(1) An unemployment benefits contested case is commenced with the filing, by mail, facsimile, or email, online, or in person, of a written appeal by a party with the appeals bureau of the department. The appeal shall be addressed or delivered to: Appeals Bureau, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. An online appeal is filed by completing and submitting an online appeal form available on the Iowa workforce development website.

26.4(2) An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or email, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address....

....

26.4(5) Appeals transmitted by facsimile, by email, or online which are received by the appeals bureau after 11:59 p.m. Central time shall be deemed filed as of the next regular business day.

871 IAC 26.4.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Bearslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed

by rule 871-24.35(2) which states that “the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.” These principles govern this matter - not the good cause rule which applies to late appeals to the Board. *C.f. Houlihan v. Employment Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996)(15 day appeal deadline to Board extended for good cause under Board rule 3.1).

The rules of Iowa Workforce Development do not give this Board the flexibility to extend the deadline for good cause. There is no indication that the delay in this case was caused by an error of Workforce or by the postal service. The email here was not sent to a valid email address until one day past the deadline. It therefore could not have possibly been received by the Department until, at the earliest, one day past the deadline. The email is deemed filed under rule 26.4 no earlier than April 20, which is a day late. We emphasize that this is not a case where the Claimant sent the appeal to the wrong division within Workforce, or even to the wrong agency in government. Here the email was not sent to a valid email address at all, and in that sense no information was transmitted beyond the Google Mail mailer-daemon. The most analogous non-electronic situation would be where the appeal is placed in the mail but addressed to a non-existent city. The document would not ever get delivered anywhere except back to the sender. This would occur from a perfectly well functioning postal service. Just so there was no software or hardware problem that caused the email to get returned. It was the Claimant's carelessness in typing in the email address. We appreciate that the Claimant tried to appeal in time, but the law only permits late appeals if the error is in the agencies' or the post office's. This is clearly not the case and we must find the appeal to the Administrative Law Judge to be untimely. The fact finding decision disqualifying the Claimant must therefore be reinstated.

DECISION:

The administrative law judge's decision dated May 15, 2018 is **REVERSED**. The Employment Appeal Board concludes that the appeal to the Administrative Law Judge was untimely and that, as a result, there was no jurisdiction to entertain the Claimant's appeal. Accordingly, she is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)(g); Iowa Code section 96.5(2)"a".

The Board remands this matter to the Iowa Workforce Development Center, Benefits Bureau, for a calculation of the overpayment amount based on this decision.

Kim D. Schmett

James M. Strohmman

RRA/fnv