

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE J TOTH
Claimant

APPEAL 18A-UI-11224-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/05/17
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Available for work
Iowa Code § 96.4(7) – Reemployment services
Iowa Admin. Code r. 871-24.6 – Profiling for reemployment services
Iowa Admin. Code r. 871-24.2(1)e – Procedures for workers desiring to file a claim for benefits
Iowa Admin. Code r. 871-24.23 (11) – Failure to Report

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 11, 2017 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to report for a reemployment services appointment. The parties were properly notified of the hearing. A telephone hearing was held on December 6, 2018. The claimant participated personally. Stacy Perkins participated on behalf of Iowa Workforce Development (“IWD”). Claimant Exhibit A (appeal letter) and IWD Exhibits 1 and 2 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records and initial decision. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of November 5, 2017. Claimant was selected to participate in a reemployment services appointment on December 6, 2017 but failed to go to the appointment. Thereafter, the claimant was sent the reference 01 decision on December 11, 2017, which told the claimant he was ineligible for benefits because he missed the class. The decision warned the claimant that he would remain ineligible until he completed the appointment. The decision also contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 21, 2017.

In November 2017, the claimant resumed working and was out of town frequently for work. He confirmed he was working during the appeal period as well. His mail continued to be sent to the address of record, where his wife collected the mail for his return. The claimant doesn't know if he received the initial decision or not, but stated if he had, he ignored it since he was no longer attempting to collect unemployment insurance benefits.

Then the claimant established an additional claim for benefits effective September 16, 2018, which fell under the same benefit year. Because he failed to complete the course or resolve the reemployment services appointment, he was not paid benefits. After "two or three weeks", the claimant called IWD to inquire about why he had not received the anticipated benefits and learned his claim was locked. (Two or three weeks after he opened his claim would have been late September/early October 2018.) He then went back to work and failed to investigate the lock on his claim, which resulted in further delay of filing his appeal. Upon returning back from work, he filed his appeal November 16, 2018, approximately eleven months after the initial decision was rendered (Claimant Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant's appeal is untimely.

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 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 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant acknowledged he disregarded mail sent to him after mid-November 2017 from Iowa Workforce Development, because he had already returned to work. Even if the claimant did not receive the initial decision in 2017 when it was mailed, he was placed on notice within two or three weeks of his additional claim effective September 16, 2018, when he learned he was locked from receiving benefits. The claimant then returned to work again and further delayed filing his appeal, even though he knew of an issue in late September/early October 2018. The claimant had constructive notice of the decision at that time and waited more than ten days to file his appeal, as it was not sent until November 16, 2018 (Claimant Exhibit A).

Based on the evidence presented, the administrative law judge concludes that the claimant's 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* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The December 11, 2017 (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The administrative law judge would note this decision has no impact on the claimant's current claim for benefits with an effective date of November 4, 2018.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn