

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JARED W IRVIN
Claimant

SEQUEL YOUTH SERVICES OF CLARINDA
Employer

APPEAL NO. 20A-UI-11708-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1R)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a late appeal from the May 19, 2020, reference 01, decision that allowed benefits to the claimant effective April 12, 2020, provided she was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on November 16, 2020. The claimant did not provide a telephone number for the appeal hearing and did not participate. Ava Niazi, Thomas & Company UI Hearings Analyst, represented the employer and presented additional testimony through Ava Niazi. Exhibit 1 was received into evidence. The administrative law judge took official notice of the May 19, 2020, reference 01, decision.

The employer's representative, Thomas & Company, had registered Lana Bartmess, Human Resources Director, as a participant in the appeal hearing. When the administrative law judge attempted to reach Ms. Bartmess for the hearing, Sequel Youth Services of Clarinda personnel advised the administrative law judge that Ms. Bartmess no longer works for Sequel, that there was not a substitute for Ms. Bartmess, and that human resources matters had been transferred to the employer's corporate office in Huntsville, Alabama. Ms. Niazi, as the employer's agent functioned as the employer's representative for the appeal hearing.

ISSUE:

Whether the appeal 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: On May 19, 2020, Iowa Workforce Development mailed the May 19, 2020, reference 01, decision to the employer's last-known address of record. The decision allowed benefits to the claimant effective April 12, 2020, provided she was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. The decision stated that the decision would become final unless an appeal was postmarked by May 29, 2020 or received by the Appeal Section by that date. The employer's representative of record has at all relevant times been Thomas & Company. The employer's address of record has at all

relevant times been the United States Postal Service post office box assigned to Thomas & Company. The weight of the evidence indicates that the decision was received at the address of record in a timely manner, prior to the deadline for appeal. Neither Thomas & Company nor the employer took steps to file an appeal by the May 29, 2020 appeal deadline.

On August 21, 2020, Thomas & Company routed the May 19, 2020, reference 01, decision to Ava Niazi, Thomas & Company UI Hearings Analyst. On August 21, 2020, Ms. Niazi contacted the employer. On August 21, 2020, the employer communicate to Ms. Niazi a desire to proceed with the appeal. However, Thomas & Company then further delayed filing the appeal until September 24, 2020. On that day, Thomas & Company representative drafted an appeal and faxed it to the Appeals Bureau. The Appeals Bureau received the decision on September 24, 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). 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 in the record establishes an untimely appeal. The weight of the evidence indicates that the employer's agent received the decision in a timely manner, prior to the appeal deadline. There is insufficient evidence to establish otherwise. The employer and its representative had a reasonable opportunity to file an appeal by the May 29, 2020 appeal deadline. No one took steps to file an appeal by the deadline. Instead, the employer's agent unreasonably delayed action on the matter until August 21, 2020, when it corresponded with the employer. The employer's agent then further unreasonably delayed filing the appeal until September 24, 2020, just short of four months. Even if the evidence had established there was not a reasonable opportunity to file an appeal by the May 29, 2020 appeal deadline, the appeal would still be untimely in light of the lengthy and unreasonable delay in filing the appeal. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). The late filing of the appeal was not attributable to Iowa Workforce Development or to the United States Postal Service. There is not good cause to treat the very late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the May 19, 2020, reference 01, 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 employer's appeal was untimely. The May 19, 2020, reference 01, decision that allowed benefits to the claimant effective April 12, 2020, provided she was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff, shall stand.

This matter is **remanded** to the Benefits Bureau for an initial determination concerning the claimant's *separation* from the employment.

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

November 20, 2020
Decision Dated and Mailed

jet/mh