

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA DAHLEN
Claimant

APPEAL 17A-UI-04213-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 01/15/17
Claimant: Appellant (1R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 22, 2017 (reference 02) unemployment insurance decision that denied benefits because claimant failed to report as directed. After due notice was issued, a telephone hearing was held on May 10, 2017. Claimant participated. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Is the claimant's appeal timely?
Did the claimant fail to report as directed or offer a good cause reason for failure to do so?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision finding that the claimant was not eligible for benefits was mailed to his last known address of record on March 22, 2017. This decision stated that the claimant was mailed a notice to report to Iowa Workforce Development and failed to report.

Claimant moved to a new address at the beginning of March, 2017. He did not provide his new address to Iowa Workforce Development or file a notice of forwarding address with the United States Postal Service when he first moved. Claimant did not receive the decision that was originally mailed to him on March 22, 2017. However, on March 28, 2017 claimant contacted Iowa Workforce Development after the online system would not accept his weekly claim for benefits. He requested a copy of the March 22, 2017 decision be mailed to him at his new address and provided his new address to Iowa Workforce Development on that date.

Claimant received a copy of the March 22, 2017 decision on or about April 3, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 1, 2017, or if that date falls on a Saturday, Sunday, or legal holiday (which it did

in this case) then the appeal period would be extended to the next working day. As such, the appeal in this case was due April 3, 2017. The appeal was filed on April 17, 2017 via online transmittal, which was 14 days after the claimant received a copy of the decision and 20 days after the claimant first learned about the decision finding him ineligible for benefits.

The notice to report was sent to claimant because he reported that he refused an offer of work for the benefit week ending March 11, 2017 when filing his weekly claim. Claimant testified that he refused an offer of work during the benefit week ending March 11, 2017. Claimant did not receive the notice to report because he had moved and did not notify Iowa Workforce Development or the United States Postal Service of his new mailing address.

There has been no initial investigation and determination regarding whether claimant failed to accept a suitable offer of work. The question of whether the claimant failed to accept a suitable offer of work will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's appeal is timely. The administrative law judge finds that it is not.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). The appeal in this case was filed via the online system on April 17, 2017.

The record in this case shows that more than ten calendar days elapsed between the initial mailing date (March 22, 2017), the date claimant became aware of the decision (March 28, 2017), the date the decision was actually received by the claimant (April 3, 2017), and the date this appeal was filed (April 17, 2017). 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal, but did not do so.

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 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 March 22, 2017 (reference 02) decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND: The refusal of a suitable offer of work issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs