

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VALERIE BOLLIE

Claimant

APPEAL NO. 20A-UI-13340-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 04/26/20

Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Valerie Bollie filed a late appeal from the October 12, 2020, reference 03, decision that denied benefits for the period beginning June 21, 2020, based on the deputy's conclusion that Ms. Bollie was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on December 17, 2020. Ms. Bollie participated. Alicia Carlson represented the employer. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the October 12, 2020, reference 03, decision, of the weekly claims (KCCO) and of the benefits disbursed to the claimant (DBRO and KPYX).

ISSUE:

Whether there is good cause to treat the late appeal as timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Valerie Bollie established an original claim for benefits that was effective April 26, 2020 and an additional claim for benefits that was effective Jun 21, 2020. At the time Ms. Bollie established her original claim for benefits, she provided Iowa Workforce Development with an erroneous mailing address. Though Ms. Bollie was at that time living in house number 501, she registered her address of record as house number 503. About a year ago, Ms. Bollie moved from house number 503 to 501, the house next door on the same street in Madrid. Ms. Bollie has lived in Madrid for more than two decades, has had the same postal carrier for two years, and is known to the postal carrier. Prior to October 26, 2020, Ms. Bollie had not taken any steps to correct her address of record with Iowa Workforce Development. On October 12, 2020, Iowa Workforce Development mailed the October 12, 2020, reference 03, to Ms. Bollie's address of record. The decision denied benefits for the period beginning June 21, 2020, based on the deputy's conclusion that Ms. Bollie was not partially unemployed within the meaning of the law during that period. Ms. Bollie has not received any benefits for the period that began June 21, 2020. The decision stated that it would become final unless an appeal was postmarked by October 22, 2020 or received by the Appeals Bureau by that date.

Despite the house number being off by one digit, the weight of the evidence establishes that Ms. Bollie received the decision in a timely manner, prior to the deadline for appeal. Ms. Bollie's testimony regarding when and how she received the decision is at odds with the written statement she provided in her October 26, 2020 online appeal. Ms. Bollie cannot recall when she received the decision. Ms. Bollie recalls that when she found the decision, it was sitting in her accumulated mail on top of her microwave. Ms. Bollie does not know how long the correspondence was sitting on her microwave before she reviewed her accumulated mail and noted the correspondence. Ms. Bollie does not know what day she reviewed the correspondence. At some later point, Ms. Bollie had her daughter review the decision. On October 26, 2020 Ms. Bollie completed and transmitted an online appeal that included her correct house number, 501. In the online appeal, Ms. Bollie wrote "It came in the mail a day late and then my room mates [sic] gave it to me just over the weekend!" Ms. Bollie wrote in her online appeal that she had received the decision on October 23, 2020. At the time of the appeal hearing, Ms. Bollie did not know what had become of her copy of the decision. The assertion in the online appeal was accurate in stating the decision had just arrived in the mail on October 23, 2020, that it took 11 days for the decision to make the 30-mile trip from Des Moines to Ms. Bollie's home in Madrid. The weight of the evidence fails to support that assertion.

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). 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The weight of the evidence in the record establishes that the appellant had a reasonable opportunity to file an appeal by the October 22, 2020 deadline.

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. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb the 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 was untimely. The October 12, 2020, reference 03, decision that denied benefits *for the period beginning June 21, 2020*, based on the deputy's conclusion that Ms. Bollie was not partially unemployed within the meaning of the law, remains in effect.

In the event this decision regarding timeliness of appeal is reversed upon further appeal, there is sufficient evidence in the record for entry of a decision on the merits without need for further hearing.

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

December 31, 2020
Decision Dated and Mailed

jet/scn