

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PARRIS L STERLING
Claimant

OREILLY AUTOMOTIVE INC
Employer

APPEAL 21A-UI-07353-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 26, 2021 (reference 02) unemployment insurance decision that denied benefits based on a finding that claimant was on an approved leave of absence. A telephone hearing was scheduled for May 20, 2021, pursuant to due notice. Claimant requested the hearing be rescheduled due to a late appearance by her attorney. A hearing was scheduled for June 24, 2021, pursuant to due notice. Claimant and employer jointly requested the hearing be rescheduled to allow for discovery. The parties were properly notified of the new hearing date. A hearing was scheduled for July 30, 2021, pursuant to due notice.

On July 30, 2021, claimant was unavailable at the time of the hearing due to an emergency illness. The hearing was rescheduled, and the parties were properly notified of the new hearing date. A telephone hearing was held on September 17, 2021, and was consolidated with the hearing for appeals 21A-UI-07352-S2-T and 21A-UI-07354-S2-T. Claimant Parris L. Sterling participated personally and was represented by attorney Nadine Stille. Employer O'Reilly Automotive, Inc. participated through store managers Josh Salzbrun and John Wallace and was represented by attorney Jaki Samuelson. Claimant's Exhibits 1 – 5 and 7 – 9 were received and admitted into the record. Claimant's Exhibit 6 was received and admitted into the record over objection. Employer's Exhibits A – I were received and admitted into the record. Department's Exhibit D-1 was received. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last known address of record on January 26, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 5, 2021. The appeal was not filed until March 10, 2021, which is

after the date noticed on the disqualification decision. Claimant received the decision seven to fourteen days after it was mailed, between February 2 and February 9, 2021.

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, subsection 10, 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows 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. 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.

Here, claimant's appeal was not received until March 10, 2021. She testified she filed an appeal on February 23, 2021; however, no appeal was received by the Appeals Bureau. Even if she had filed an appeal on February 23, 2021, the appeal would still be considered untimely. Claimant received the decision by February 9, 2021. Ten days from that date, which is the amount of time provided for filing an appeal, would be February 19. Thus, even if claimant had filed the appeal on February 23, 2021, it would have been filed late, past the ten days provided for filing an appeal.

The failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. See Iowa Administrative Code rule 871-24.35(2). Accordingly, there is not good cause to treat the late appeal as a timely appeal. Because the appeal was untimely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal or to disturb the decision from which the claimant appealed. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The January 26, 2021, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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September 24, 2021
Decision Dated and Mailed

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