IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

TIRSO E GOITIA
Claimant

IAC IOWA CITY LLC
Employer

APPEAL NO. 11A-UI-12685-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/13/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Tirso E. Goitia (claimant) appealed a representative's February 19, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits effective October 25, 2009 because of a separation from IAC Iowa City, L.L.C (employer) which the decision ruled to be disqualifying. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 19, 2011. This appeal was consolidated for hearing with one related appeal, 11A-UI-12686-DT. The claimant participated in the hearing. Teresa Feldmann appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's appeal timely or are there legal grounds under which it can be treated as timely?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on February 19, 2010. The claimant received the decision shortly thereafter. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 1, 2010. The appeal was not filed until it was hand-delivered to a local Agency office on September 22, 2011, which is after the date noticed on the disqualification decision. The claimant had not appealed when he received the decision because he had been otherwise occupied and did not have a ready source of transportation in the February/March timeframe 2010. He did not appeal until after he received a resulting overpayment decision issued on September 9, 2011 (reference 05); however, he did not appeal by the deadline for appealing that decision, September 19, 2011, because of again being otherwise occupied and not having a ready source of transportation.

The employer agrees that the representative's decision regarding the separation was in error, and that the separation was actually a layoff. The employer uses a third-party representative agent, TALX Employer Services. In January 2010, the employer informed TALX that the separation was a layoff; however, TALX still protested the claimant's claim for unemployment insurance benefits, asserting that the separation was a voluntary quit, and did not inform the Agency that the employer considered the separation to be a layoff. TALX did not inform the employer of the issuance of the decision which disqualified the claimant because of the separation.

REASONING AND CONCLUSIONS OF LAW:

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 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 then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the appellant's failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, even though the merits of the appeal appear to be valid. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

Further, since the employer has chosen to be represented by a third-party representative agent, the employer is bound by the actions (or non-actions) of its agent. The fact that the employer was not directly made aware of the issuance of the disqualification decision by its third-party agent does not create an opportunity for the employer itself to challenge the decision at this time.

DECISION:

The representative's February 19, 2010 decision (reference 02) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. Benefits are denied as of October 25, 2009.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw