

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAYLEY TUINSTR
Claimant

APPEAL NO: 13A-UI-10471-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/21/13
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Hayley Tuinstra (claimant) appealed an unemployment insurance decision dated May 21, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was not medically able to work for Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 14, 2013. The claimant participated in the hearing. The employer participated through Melissa Stephens, Assistant Manager. Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on May 21, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 31, 2013. The appeal was not filed until September 12, 2013, which is after the date noticed on the disqualification decision.

The claimant was hired as a full-time cashier on May 1, 2008 but went part-time on September 2009. She is still employed in that same capacity but went on a non-work-related medical leave beginning March 24, 2013. The employer has medical documentation confirming the claimant was unable to work from March 24, 2013 through May 16, 2013, at which time she could return to work with restrictions of lifting no more than 20 pounds. The claimant was unable to perform the essential functions of her position with that restriction. She was released to return to work without restrictions as of May 30, 2013 but she was out of town for a funeral so returned to work on June 3, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2).

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 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

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 871 IAC 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

However, in the alternative, even if the appeal were to be deemed timely, the administrative law judge would affirm the representative's decision on the merits. The unemployment insurance law disqualifies claimants from receiving benefits if the claimant is not medically able to work. Iowa Code § 96.4-3. The claimant was unable to work from March 24, 2013 through May 30, 2013. Consequently, she would not be eligible for unemployment insurance benefits during that same time frame.

DECISION:

The claimant's appeal in this case was not timely. The unemployment insurance decision dated May 21, 2013, reference 01, is affirmed. The claimant does not meet the availability requirements of the law as of April 21, 2013.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs