

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGEL C AMBRA
Claimant

APPEAL NO: 14A-UI-05195-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 02/09/14

Claimant: Appellant (2)

Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Angel C. Ambra (claimant) appealed a representative's March 12, 2014 (reference 02) decision that concluded she was not qualified to receive unemployment insurance benefits because she was not able and available for work. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on June 19, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-05196-DT. The claimant participated in the hearing. During the hearing, Exhibits A-1 and A-2 were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on March 12, 2014. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 22, 2014, a Saturday. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, March 24. The appeal was not treated as filed until the claimant appealed the resulting overpayment decision on May 19, 2014, which is after the date noticed on the disqualification decision.

After receiving the decision the claimant went to a local Agency office to make an appeal. She was advised that to make an appeal she should get a note from her doctor. She did so, and returned to the Agency office on March 15, 2014. She submitted her statement to the Agency office that day with the doctor's note which she intended to be treated as an appeal of the March 12, 2014 decision. The Agency office did not treat the statement as an appeal and did not forward the information to the Appeals Bureau. At the time of the hearing the administrative law judge discovered these documents had been scanned into the claimant's benefit file as "general correspondence."

The claimant established an unemployment insurance benefit year effective February 9, 2014. From that time through the date of the hearing the claimant has been on a lifting restriction of no more than 25 pounds, and is limited to working no more than 40 hours per week. She has been applying for full time and part time work such as working as a cashier or in a restaurant, which she would be able to do under her work restrictions.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. 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 administrative law judge concludes that failure to treat the claimant's statement filed with the local Agency office on March 15 as an appeal of the March 12 decision, within the time prescribed by the Iowa Employment Security Law, was due to Agency error or misinformation pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee*, supra; *Franklin*, supra; and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that she is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's March 12, 2014 (reference 02) decision is reversed. The claimant is able to work and available for work effective February 9, 2014. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can