

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENT N ROULET
Claimant

APPEAL NO. 17A-UI-03828-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TLH CLEANING LLC
Employer

OC: 12/11/16
Claimant: Respondent (1/R)

Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the January 10, 2017, reference 02, decision that allowed benefits to the claimant effective December 11, 2016, provided he was otherwise eligible and that relieved the employer's account of liability for benefits, based on an agency conclusion that the claimant was able to work, available for work, and not partially unemployed from this employer. After due notice was issued, a hearing was held on May 2, 2017. Claimant Brent Roulet did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Ted Hammes represented the employer. Exhibits 1 through 4 were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 10, 2017, Iowa Workforce Development mailed the January 10, 2017, reference 02, decision to TLH Cleaning, L.L.C. at its last-known address of record. The decision allowed benefits to the claimant effective December 11, 2016, provided he was otherwise eligible and that relieved the employer's account of liability for benefits, based on an agency conclusion that the claimant was able to work, available for work, and not partially unemployed from this employer. The decision stated that an appeal from the decision must be postmarked by January 20, 2017 or received by the Appeals Bureau by that date. That employer received the decision in a timely manner, but did not take steps to file an appeal by the January 20, 2017 appeal deadline. On April 3, 2017, Ted Hammes, President of TLH Cleaning, L.L.C. drafted an appeal and mailed it the Appeals Bureau. The postmark date on the envelope is illegible. The Appeals Bureau received the appeal on April 5, 2017. The appeal appears to address a potential separation from the employment as well as the claimant's recent availability for work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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-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 871 AC 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 871 IAC 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 record shows that the employer did have a reasonable opportunity to file a timely appeal from the January 10, 2017, reference 02, decision, but did not to file an appeal from the decision by the January 20, 2017. The employer filed an appeal on April 3, 2017. This was a little over 10 weeks beyond the January 20, 2017 appeal deadline. The late filing of the appeal was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The appeal was untimely. Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the lower decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Because the able and available requirement involves a week-by-week determination, the employer's late appeal from the January 10, 2017, reference 02, which addressed the claimant's availability for work effective December 11, 2016, does not prevent the agency from adjudicating the able and available issues for the weeks not addressed in the January 10, 2017, reference 02, decision. At the time of the January 10, 2017, reference 01, decision decided the able and available issues for the period of December 11, 2016 through January 7, 2017. Accordingly, this matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work, available for work, and partially unemployed, and whether the employer's account may be assessed for benefits, for the period beginning January 8, 2017. The Benefits Bureau should also consider whether there has been a separation from the employment.

DECISION:

The January 10, 2017, reference 02, decision is affirmed. The employer's appeal from that decision was untimely and that decision remains undisturbed. However, this matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work, available for work, and partially unemployed, and whether the employer's account may be assessed for benefits, for the period beginning January 8, 2017. The Benefits Bureau should also consider whether there has been a separation from the employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs