

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DEBORAH L KRIEMAN
PO BOX 183
GRIMES IA 50111

BROADLAWNS MEDICAL CENTER
ATTN PERSONNEL DEPARTMENT
18TH & HICKMAN
DES MOINES IA 50314

Appeal Number: 04A-UI-12346-RT
OC: 09-26-04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, Deborah L. Krieman, filed an appeal from an unemployment insurance decision dated October 15, 2004 reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on December 13, 2004, with the claimant participating. Sheila Barrett, Benefits Coordinator, participated in the hearing for the employer, Broadlawns Medical Center. Department Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit 1, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on October 15, 2004, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because she voluntarily quit work on August 31, 2004, for personal reasons, and her quitting was not caused by her employer. This decision was sent to the claimant at her correct and proper mailing address, a PO Box in Grimes, Iowa, on October 15, 2004. The claimant maintains her official mailing address as the PO Box in Grimes, Iowa. However, the claimant lives in Urbandale, Iowa and sometimes only gets to Grimes, Iowa once a month to check her mail. The decision sent to the claimant indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by October 25, 2004. However, the claimant did not appeal or attempt to appeal the decision until November 15, 2004, when she left a copy of her appeal at the local Workforce Development office. The office then forwarded it to the Appeals Section, received by the Appeals Section on November 17, 2004. The claimant's appeal was at least 21 days late. The only reason for the delay was that the claimant did not check her post office box in Grimes, Iowa promptly. When she did finally check her post office box on or about November 15, 2004, the decision was there. The claimant then went to her local Workforce Development office and was told to appeal the decision. The claimant filed for unemployment insurance benefits and participated in fact-finding and knew, or should have known, that a decision would be forthcoming. The claimant has not and will not change her official mailing address to Urbandale because she does not know how long she will be staying in Urbandale. The claimant's appeal appears at Department Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant filed a timely appeal or, if not, whether the claimant demonstrated good cause for such failure. The administrative law judge concludes that the claimant's appeal was not timely and the claimant has not demonstrated good cause for a delay in the filing of her appeal and, as a consequence, the claimant's appeal should not be accepted and the administrative law judge has no jurisdiction to reach the remaining issue.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach that issue.

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. 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the claimant has the burden to prove that her appeal was timely or that she had good cause for a delay in the filing of her appeal. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence either that her appeal was timely or that she had good cause for a delay in the filing of her appeal. On its face, as shown at Department Exhibit 1 and as set out in the findings of fact, the claimant's appeal is not timely, being 21 days late. The claimant testified that it was late because she did not get to her official mailing address, a post office box in Grimes, Iowa, promptly. The claimant testified that she might wait as much as a month to check her mail. The administrative law judge must conclude on the evidence here that this is not good cause for a delay in the filing of her appeal. The claimant testified that she had no money to get out to her post office box. If the claimant was unable to

get to her post office box promptly she should have changed her address in some fashion. The claimant filed for unemployment insurance benefits and participated in fact-finding and should have been expecting a decision and should have been checking her mail. Here, there is no evidence that the delay in the filing of her appeal was due to any errors by the US Postal Service or Iowa Workforce Development, but was merely because of the claimant's delay in checking her mail. The administrative law judge must conclude that this is not good cause for a delay in filing her appeal. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of a decision dated October 15, 2004, reference 01, is not timely and the claimant has not demonstrated good cause for a delay in the filing of her appeal. Therefore, the administrative law judge concludes that the claimant's appeal should not be accepted and he lacks jurisdiction to make a determination with respect to the other issue presented. The administrative law judge further concludes that the representative's decision of October 15, 2004, reference 01, should remain in full force and effect.

DECISION:

The representative's decision dated October 15, 2004, reference 01, is to remain in full force and effect. The claimant, Deborah L. Krieman, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits. The claimant's attempted appeal is not timely and the claimant has not demonstrated good cause for its delay.

b/tjc