

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A KUIPER
Claimant

APPEAL NO. 14A-UI-04617-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/06/14
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Julie Kuiper filed an appeal from an April 28, 2014, reference 01, disqualification decision that the Appeals Bureau treated as also an appeal from the April 21, 2014, reference 02, decision that denied benefits effective April 6, 2014 based on an agency conclusion that the claimant was not able to perform work. After due notice was issued, a hearing was held on May 22, 2014. Ms. Kuiper participated. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-04618-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

Ms. Kuiper asserted at the end of an almost two-hour hearing that she was having difficulty focusing due to a migraine. Throughout the hearing, Ms. Kuiper had demonstrated no deficiency in her ability to focus on and fully participate in the hearing. Ms. Kuiper's assertion of difficulty focusing came at the end of the hearing, when the administrative law judge was asking pointed questions, the answers to which were not helpful to Ms. Kuiper's side of the case.

ISSUE:

Whether Ms. Kuiper's appeal was a timely appeal from the April 21, 2014, reference 02, decision that denied benefits effective April 6, 2014 based on an agency conclusion that the claimant was not able to perform work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Julie Kuiper established a claim for benefits that was effective April 6, 2014. On April 21, 2014, Iowa Workforce Development mailed a copy of the April 21, 2014, reference 02, decision to Ms. Kuiper's last-known address of record. The decision denied benefits effective April 6, 2014 based on an agency conclusion that Ms. Kuiper was not able to perform work. Ms. Kuiper received the decision in a timely manner within a day or two after the April 21, 2014 mailing date. The decision contained a warning that an appeal from the decision must be postmarked by May 1, 2014 or be received by the Appeals Section by that date. The decision had also indicated that if Ms. Kuiper believed the disqualification could be removed, she should contact

her local Workforce Development Center with appropriate information. Ms. Kuiper was in contact with the agency about providing medical documentation concerning her ability to work, but Ms. Kuiper did not take any steps to file an appeal from the April 21, 2014, reference 02, decision by the May 1, 2014 appeal deadline.

On April 28, 2014, Iowa Workforce Development mailed an April 28, 2014, reference 01, decision that disqualified Ms. Kuiper for benefits based on her discharge from Caleris, Inc. That decision carried a May 8, 2014, appeal deadline. Ms. Kuiper faxed her appeal letter to the Appeals Section on May 5, 2014. The Appeals Section received the appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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).

Ms. Kuiper's appeal was filed on May 5, 2014, the day the Appeals Section received the appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date of the April 21, 2014, reference 02, decision and the May 5, 2015 filing of the appeal. 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.

Ms. Kuiper's failure to file a timely appeal from the April 21, 2014, reference 02, decision within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Because the appeal from April 21, 2014, reference 02, decision was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to disturb that decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claims deputy's April 21, 2014, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision that denied benefits effective April 6, 2014 based on an agency conclusion that the claimant was not able to perform work remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css