IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DAVID BRAL
Claimant

FARM & CITY SUPPLY LLC
Employer

APPEAL NO: 13A-UI-09964-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/30/12
Claimant: Respondent (1)

Section 96.5(3)a – Work Refusal
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 10, 2013, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 30, 2013. The claimant participated in the hearing. Jeret Koenig, Member and Cheryl Koenig, Accounting Manager, participated in the hearing on behalf of the employer. Department's Exhibits D-1 and D-2 were admitted into evidence.

ISSUE:

The issues are whether the employer's appeal is timely and whether the claimant refused a suitable offer of work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the employer's last-known address of record on June 10, 2013. The employer received the decision but did not understand it and called the Agency for an explanation of the decision. At that time it was told the claimant would not be receiving benefits and consequently it did not file an appeal. That information was incorrect and the employer did not file an appeal of the fact-finder's decision until it received its next statement of charges, mailed August 9, 2013, and received by the employer shortly after that date. The employer still waited until August 30, 2013, to file its appeal of the fact-finding decision with the Appeals Bureau. Allowing for the ten-day period between the time a decision is mailed, in this case August 9, 2013, the decision would have been due August 19, 2013. The appeal was not filed until August 30, 2013, which is after the date noticed on the disqualification decision. Even allowing for the Agency error in telling the employer the claimant was not receiving benefits, the employer waited 21 days to file its appeal of the decision once it learned the claimant was receiving benefits. Under those circumstances the administrative law judge must conclude the employer's appeal is not timely.

In the alternative, even if the employer's appeal had been timely the administrative law judge would have found the following:

The claimant sold his business to the employer and they signed a purchase agreement December 4, 2012, stating the claimant would help with the transition of the business and while he did so the employer would pay him $10.00 per hour beginning January 1, 2013, the date the new owners actually took over. The claimant began working on the transition December 4, 2012, by doing inventory, helping change the credit card machine over to the new owner and talking to vendors, explaining the new situation to them, among other tasks. There was no specific period stated in the purchase agreement defining the time frame for the transition period or how long the claimant was expected to stay. He believed the transition was complete by January 1, 2013, and the new owners never called him for advice or help after December 30, 2012. Consequently, the claimant believed he had fulfilled his transitional duties as of December 30, 2012, and, because he never heard from the new owners after that date, he felt he had met his obligations to the new owners. Therefore, the administrative law judge concludes the claimant is able and available for work and did not refuse a suitable offer of work December 4, 2012, because he completed his portion of the transition and was never called by the employer after December 30, 2012. Additionally, he did not have a valid claim for unemployment insurance benefits until the week ending January 5, 2013, and thus the administrative law judge lacks the jurisdiction to rule on the work refusal case as he had completed the transition and the employer never contacted him after December 30, 2012.

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 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 date the employer received the statement of charges and learned it received erroneous information regarding the claimant receiving benefits when it called to inquire about the fact-finding decision, and the date this appeal was filed. Additionally, the representative's decision clearly states the claimant is allowed benefits and while the employer may not have understood the reasoning, there was nothing preventing it from pursuing a timely appeal as parties do, whether or not they understand the decision of agree with it. 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 Section 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).

DECISION:

The June 10, 2013, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

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