

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOLYNN S WISHMEYER**

Claimant

**APPEAL NO: 14A-UI-00215-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VOLT MANAGEMENT CORP**

Employer

**OC: 12/01/13**

**Claimant: Appellant (4)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Jolynn S. Wishmeyer (claimant) appealed a representative's December 18, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Volt Management Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 30, 2014. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that the employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibit A-1 was 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? Is the claimant employed by the employer for less than her usual hours and wages and eligible for full or partial unemployment insurance benefits?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last-known address of record on December 18, 2013. The claimant received the decision, but not until January 2, 2014; mail delivery to the claimant's area had been delayed for a substantial number of days due to weather. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 28, 2013, 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, December 30. The appeal was not filed until it was faxed and received at the Appeals Section on January 8, 2013, which is after the date noticed on the disqualification decision.

The employer is a temporary employment firm. The claimant worked for the employer with John Deere. She was laid off for lack of work, both with the employer and with John Deere, as of December 21.

The claimant had established an unemployment insurance benefit year effective December 1, 2013. She filed weekly claims for the weeks ending December 7, December 14, and December 21 in which she was working her regular hours and wages and earned and reported sufficient wages so that she was not eligible for any partial unemployment insurance benefits. The representative was looking at these weeks when the decision was issued. Beginning December 22 there were weeks where the employer was not providing the claimant with her regular hours and wages and she had no earnings.

#### **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 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 not 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 due to delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. 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).

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00. Iowa Code §96.19-38-b.

From December 1 through December 21, 2013, the employer was providing the claimant with substantially her normal hours and wages and she was not partially unemployed or eligible to receive any partial benefits. However, beginning December 22, 2013, the employer was not providing the claimant with substantially the same employment as it had previously provided. Consequently, the claimant is qualified to receive partial unemployment insurance benefits effective December 22, 2013, provided she was otherwise eligible.

**DECISION:**

The appeal in this case is treated as timely. The unemployment insurance decision dated December 18, 2013 (reference 01) is modified in favor of the claimant. The claimant was not partially unemployed or eligible to receive partial unemployment for the period of December 1 through December 21, 2013. As of December 22, 2013, she is eligible for partial unemployment insurance benefits if she is otherwise qualified.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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