

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L KELLER
Claimant

APPEAL NO. 12A-UI-02643-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

A J ALLEN MECHANICAL CONTRACTORS
Employer

OC: 01/13/10
Claimant: Respondent (1)

Section 96.5-5-a-3 – Deductibility of Pension Benefits
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 17, 2012, reference 05, which held the claimant's pension was non-deductible from his unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 2, 2012. The claimant was available when called by the administrative law judge. The employer failed to respond to the hearing notice. The dispositive issue on appeal is the timeliness of the employer's appeal. The record will consist of the administrative file.

ISSUE:

Whether the employer filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

On January 17, 2012, a representative issued a decision that held that the claimant's pension was not deductible from his unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by January 27, 2012, or received by the Appeals Section on that date. The employer's appeal was filed on March 16, 2012.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the employer timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the employer) 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 have a reasonable opportunity to file an appeal postmarked as timely.

The administrative law judge concludes that the appellant's failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Since the employer's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the employer's claim that pension benefits should be deducted from the claimant's unemployment insurance benefits.

DECISION:

The employer failed to file a timely appeal from the representative's decision dated January 17, 2012, reference 05. That decision, which concluded that the claimant's unemployment insurance benefits would not be offset by his pension benefits, remains in full force and effect.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw