

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LATONYA POOLE

Claimant

APPEAL NO. 20A-UI-09352-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIGHTSTAR CRDM LLC

Employer

OC: 03/22/20

Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Latonya Poole filed a late appeal from the June 29, 2020, reference 02, decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that Ms. Poole was working enough hours to be considered employed and removed from the broader labor market, and therefore did not meet the unemployment insurance "availability" requirement. After due notice was issued, a hearing was held on September 22, 2020. Ms. Poole participated. Allison Redman represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, WAGE-A and the June 29, 2020, reference 02, decision.

ISSUE:

Whether there is good cause to treat Ms. Poole's late appeal as a timely appeal.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 29, 2020, Iowa Workforce Development mailed the June 29, 2020, reference 02, decision to claimant Latonya Poole at her last-known address of record. The June 29, 2020, reference 02, decision denied benefits effective March 22, 2020, based on the deputy's conclusion that Ms. Poole was working enough hours to be considered employed and removed from the broader labor market, and therefore did not meet the unemployment insurance "availability" requirement. The decision stated that an appeal from the decision must be postmarked by July 9, 2020 or be received by the Appeal Section by that date. The June 29, 2020, reference 02, decision arrived at the last-known address of record in a timely manner, most likely within a couple days of the June 29, 2020 mailing date.

The address of record was the address Ms. Poole provided to Iowa Workforce Development at the time she established the original claim that was effective March 22, 2020. The address of record was a residence in Iowa City where Ms. Poole used to reside and where her son still resides. Ms. Poole moved from the Iowa City residence to a new residence in Coralville on or

about April 15, 2020. Ms. Poole did not update her mailing address with Iowa Workforce Development when she moved or at any time prior to IWD mailing the June 29, 2020, reference 02, decision. Ms. Poole also had not contacted the United States Postal Service to have her mail forwarded to her Coralville residence. Instead, Ms. Poole had an arrangement with her son whereby her son was supposed to let her know if she had mail waiting for her. Ms. Poole was aware that her son worked long hours and did not regularly communicate regarding her accumulated mail.

Ms. Poole did not file an appeal by the July 9, 2020 appeal deadline. Ms. Poole had been in Florida and returned to Iowa on July 6, 2020. On July 10 or 11, Ms. Poole went to her son's home to collect her accumulated mail. The June 29, 2020, reference 02, decision was among the accumulated mail that was waiting for Ms. Poole. Ms. Poole opened the correspondence, saw that the decision denied benefits, and saw that the appeal deadline had passed. Ms. Poole did not take immediate steps to file an appeal from the decision. On or about July 15, 2020, Ms. Poole learned that her fiancé had a cardiac arrest and had been deemed brain-dead. Ms. Poole immediately traveled to Florida. Ms. Poole returned to Iowa on July 30, 2020. On August 5, 2020, Ms. Poole filed an online appeal from the June 29, 2020, reference 02, decision. The Appeals Bureau received the appeal on August 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part, as follows:

Unless the claimant or other interested party, after notification [of the Agency representative's decision] 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.

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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that substantially 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the June 29, 2020, reference 02, decision. Ms. Poole had a reasonable opportunity to file an appeal from the decision, but unreasonably delayed filing her appeal. Ms. Poole failed to update her address with Iowa Workforce Development or with the United States Postal Service to ensure that she received time-sensitive correspondence. Ms. Poole entered into an unnecessary, unreasonable, and unworkable arrangement with her son whereby he was supposed to receive her mail and let her know that mail had been received. Ms. Poole was aware that her son could not be relied upon to forward her mail in a timely manner due to his long work hours. While Ms. Poole was on notice to expect a decision from the deputy, she elected to travel on vacation out of state. Upon her July 6, 2020, she unreasonably delayed going to her son's home to check on her accumulated mail. As it turns out, she delayed long enough to miss the appeal deadline. When she collected and reviewed the decision, and saw that the appeal deadline had passed, she engaged in further unreasonable delay by not taking action on the matter there and then. Days later she was called away to an out-of-state emergency situation. However by that time, the appeal deadline had expired and the pattern of unreasonable conduct had been established. After Ms. Poole returned from her business in Florida on July 30, 2020, she engaged in further unreasonable delay before finally filing an appeal on August 5, 2020, almost a month after the appeal was due. The late filing of the appeal was wholly attributable to Ms. Poole and was not attributable to Iowa Workforce Development or to the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the June 29, 2020, reference 02, decision that denied benefits effective March 22, 2020. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The June 29, 2020, reference 02, decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that the claimant was working enough hours to be considered employed and removed from the broader labor market, and therefore did not meet the unemployment insurance "availability" requirement, remains in effect. In the event this decision regarding timeliness of reversed upon further appeal, there is enough evidence in the record to enter a decision on the merits without need for further hearing.



James E. Timberland
Administrative Law Judge

September 28, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**