

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KINDRA BRAFFORD-WARREN
Claimant

AMANDA SEARCY
Employer

APPEAL 18A-UI-03338-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/18
Claimant: Respondent (1R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Amanda Searcy (employer) filed an appeal from the March 2, 2018, reference 01, unemployment insurance decision that allowed benefits based upon the determination Kindra Brafford-Warren (claimant) is not working hours consistent with her base period but is able to and available for work during her normal hours. After due notice was issued, a telephone conference hearing was held on April 6, 2018. The claimant participated. The employer participated. Veridian Fiscal Services Enrollment Specialist Haley Frost participated on the employer's behalf. The Department's Exhibits D1 and D2 were received.

ISSUE:

Is the employer's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on October 8, 2010. She was hired to and worked 40 hours a week, but the days and times of work varied based on the employer's needs. The claimant earns \$19.00 an hour.

The claimant and employer had an argument on January 30, 2018. After that, the employer stopped asking the claimant for assistance. She would tell the claimant either she was with family or did not need help with anything. She did not warn the claimant that her hours might be cut.

The claimant filed her claim for unemployment insurance benefits effective February 11, 2018. The claimant did not perform any work for the employer or any other employer that week. The claimant then started working part-time for Nite Hawk Bar & Grill located at 105 Greene Street in Slater, Iowa earning \$10.00 an hour. She worked 15 hours each week for the weeks ending February 24 and March 3, 10 hours the week ending March 10, 13 hours for the week ending March 17, and 12 hours each week for the weeks ending March 24 and March 31. The claimant

resumed working for the employer during the week ending March 24 and worked one hour. The claimant worked 12.5 hours for the employer during the week ending March 31. When making her weekly continued claims for benefits, the claimant did not report any wages earned for the five weeks beginning February 11, 2018 through March 17, 2018. For the week ending March 24, the claimant reported \$19.00 in wages earned. She reported \$80.00 in wages earned for the week ending March 31.

The unemployment insurance decision allowing benefits was mailed to the employer's last known address of record on March 2, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by March 12, 2018. The decision was received at the address of record on March 5, 2018, and forwarded to the employer via email at 10:41 a.m. on March 12, 2018. The employer filed her appeal the following day on March 13, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is untimely.

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

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. . . . 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.

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 employer's 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 Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The March 2, 2018, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND:

The issue of the claimant's unreported wages, as delineated in the findings of fact, is remanded to Investigations & Recovery to determine if the wages should have been reported and if the claimant has been overpaid unemployment insurance benefits as a result.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn