

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS OWENS
Claimant

APPEAL NO: 13A-UI-01246-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/01/12
Claimant: Appellant (2)**

871 IAC 24.35(2) – Appeal Delay
Section 96.4-3 – Able and Available
871 IAC 24.2(1)e – Failure to Report
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 11, 2013, reference 01, that held he was not eligible for benefits for the week ending January 12, 2013, and benefits are denied. A telephone hearing was held on February 22, 2013. The claimant participated. Claimant Exhibit A was received as evidence, and official notice was taken of claimant appeal documents.

ISSUES:

Whether claimant filed a timely appeal.

Whether claimant failed to report.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record finds: The department mailed the decision to claimant's address of record on January 11, 2013 with an appeal deadline date of January 21. Due to walking distance to the post office and inclement weather, claimant did not receive the department decision until January 23. He had filed a January 1, 2012 unemployment claim, received benefits and had experienced no issues. He was not expecting any department decision.

After receiving the decision, claimant immediately called a department representative who could find no record of it and/or any reason why it should have been issued. Claimant questioned this information so he went to his local workforce center on January 24 to show the decisions. The department would not help him because he had no appointment.

Claimant went back to his workforce center on his January 31 appointment date and showed a representative the decisions. Even though the appeal deadline had passed, the representative took claimant's appeal (to be on the safe side) that day and it was forwarded to UI appeals.

Claimant did not receive a notice to report. He received a notice for a department fact finding scheduled for January 10 but he received no telephone call. Claimant is a seasonal employee who is on temporary layoff.

REASONING AND CONCLUSIONS OF LAW:

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. 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 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 not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant filed a timely appeal as the delay was due to claimant's timely receipt of the decision, and department miss-information. It is understandable why claimant did not timely check his mail at the post office and he had no reasonable expectation of receiving any department letters.

The department representative should have accepted a claimant appeal on January 23 and claimant's attempt to question the decision on January 24 was due to a department policy to deal with him by appointment only. The claimant offered a good cause for the appeal delay.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting and the payment of benefits, provided the individual is otherwise eligible, shall be on a biweekly basis by mail if the claimant files a Form 60-0151.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's financial institution's account or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

The administrative law judge further concludes the department issued no claimant notice to report for the week ending January 26, 2013 and no benefit disqualification is imposed.

There is no evidence of any department notice to report and no reason for it based on claimant's on-going claim record. He was a seasonal employee on temporary layoff.

DECISION:

The department decision dated January 11, 2013, reference 01, is reversed. The claimant filed a timely appeal, and the department decision he failed to report the week ending January 12, 2013 is reversed. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll