

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TOBY BUCHANAN
Claimant

SEDONA STAFFING INC
Employer

APPEAL 21A-UI-10903-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal on April 5, 2021 from the July 21, 2020 (reference 01) unemployment insurance decision that found the claimant was not eligible for benefits effective March 29, 2020 as he was on a voluntary leave of absence from work. The parties were properly notified of the hearing. A telephone hearing was held on June 18, 2021. The claimant participated personally. The employer was represented by Colleen McGuinty and participated through witness Chris Nelson. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's administrative records. The hearing was consolidated with Appeal No. 21A-UI-10904-DB-T.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An unemployment insurance decision that found the claimant was not eligible for regular State of Iowa funded unemployment insurance benefits was mailed to the claimant's correct address of record on July 21, 2020. The claimant received the decision in the mail a few days after the decision date. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 31, 2020. The claimant filed an appeal by mail with a postmark on April 5, 2021, which was after the due date listed.

The claimant alleged that he filed an appeal by mail prior to the July 31, 2020 due date; however, no appeal was docketed and no testimony regarding the date the appeal was mailed was given. No duplicate copy of the July 2020 appeal was submitted as an exhibit in the case and no other evidence regarding the mailing of the July 2020 appeal was provided, besides the testimony of the claimant. Claimant made several telephone calls to Iowa Workforce Development about the appeal; however, the dates of those telephone calls are unknown.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. **If transmitted via the United States Postal Service 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 is 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.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

(emphasis added).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. **No submission shall be considered timely if the delay in filing was unreasonable**, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

(emphasis added).

The ten calendar days for appeal begins running on the issuing 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 issuing 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 rules of Iowa Workforce Development do not give the administrative law judge the flexibility to extend the deadline for good cause, but rather, the delay must be due to division error or misinformation or, alternatively, due to delay or other action of the United States postal service.

In this case, the claimant alleged that an appeal was filed in July of 2020 and that appeal was missing. Claimant failed to testify what date he mailed this July of 2020 appeal and why he failed to file another appeal until almost nine months later. Waiting nine months to file a second appeal is considered an unreasonable delay in filing. Even if the testimony regarding what date the claimant mailed his July of 2020 appeal was present, Iowa Code § 622.105 governs the type of evidence of the date of mailing.

Iowa Code § 622.105 provides:

Evidence of date mailed.

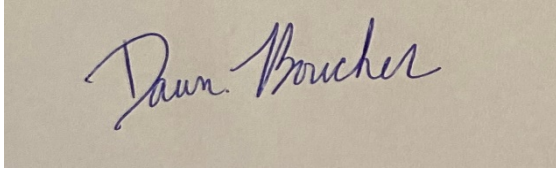
1. Any report, claim, tax return, statement, or any payment required or authorized to be filed or made to the state, or any political subdivision which is transmitted through the United States mail or mailed but not received by the state or political subdivision or received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, or payment was deposited in the United States mail on or before the date for filing or paying. In the event of nonreceipt of any such report, tax return, statement, or payment, the sender shall file a duplicate within thirty days of receiving written notification of nonreceipt of such report, tax return, statement, or payment. Filing of a duplicate within thirty days of receiving written notification shall be considered to be a filing made on the date of the original filing.
2. For the purposes of this section “competent evidence” means evidence, in addition to the testimony of the sender, sufficient or adequate to prove that the document was mailed on a specified date which evidence is credible and of such a nature to reasonably support the determination that the letter was mailed on a specific date.

When an appellant testifies that an appeal letter is missing, evidence to establish date of the appeal letter must include more than just the “testimony of the sender.” *Lange v. Iowa Dep’t of Revenue*, 710 N.W.2d 242, 247-49 (Iowa 2006); accord *Hagen v. Iowa Dental Bd.*, 13-0162 (Iowa App. 2013)(testimony that license renewal was mailed per office practice was sufficient to satisfy common law presumption but insufficient to satisfy Iowa Code § 622.105 which governs appeals to administrative agencies). As such, the testimony of the claimant that he mailed an appeal prior to the deadline, without other corroborating evidence, is insufficient to satisfy Iowa Code § 622.105.

The claimant’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 such, the appeal was not timely filed pursuant to Iowa Code § 96.6(2) and 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 July 21, 2020 (reference 01) unemployment insurance benefits decision is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

A handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

June 30, 2021
Decision Dated and Mailed

db/kmj