

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**EVERARDO RAYGOZA**  
Claimant

**APPEAL NO. 20A-UI-15766-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALUMINUM CO OF AMERICA  
DAVENPORT WORKS**  
Employer

**OC: 04/19/20  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the July 1, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 27, 2021. The claimant did participate. Employer failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether the appeal is timely?

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on July 1, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 11, 2020. The appeal was not filed until November 12, 2020, which is after the date noticed on the disqualification decision. Claimant stated that he does not believe he received a decision as he keeps documents and does not have a decision denying benefits.

Claimant stated he was furloughed for a six week period between the week ending April 19 and May 30, 2020. He was able and available to work during this period, but there was a plant shutdown for lack of work.

**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 begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to an 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). The administrative law judge further concludes that the appeal was therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Code section 96.4(3) provides:

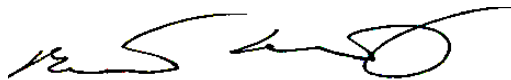
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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".

The claimant was able and available to work at all times during the plant shutdown which extended from the week ending April 19, 2020 through May 30, 2020. Employer did not have work for claimant to do during this period. As such, claimant is eligible to receive unemployment benefits, if he is otherwise eligible.

**DECISION:**

The July 1, 2020, reference 01, decision is reversed. The appeal in this case was deemed timely, and the decision of the representative is reversed as claimant was able and available for work for the week ending April 19, 2020 through the week ending May 30, 2020. Claimant is eligible to receive benefits for this period, provided he is otherwise eligible.



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Blair A. Bennett  
Administrative Law Judge

February 12, 2021  
Decision Dated and Mailed

bab/scn