

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRAD W CATHCART
Claimant

APPEAL 21A-UI-24791-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOM HASSENFRTZ EQUIPMENT CO
Employer

**OC: 09/12/21
Claimant: Respondent (6)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.6(3) - Appeals
Iowa Admin. Code r. 871-24.28(7) - Prior Adjudication

STATEMENT OF THE CASE:

November 4, 2021, employer/appellant, Tom Hassenfritz Equipment, CO., filed an appeal from the October 20, 2021, (reference 02) unemployment insurance decision that granted benefits based upon a decision on the January 5, 2021, separation was made on a prior claim and remains in effect. The parties were properly notified about the hearing. A telephone hearing was held on January 7, 2022. Claimant, Brad Cathcart, did not participate. Employer participated through Tom Hassenfritz, owner. Judicial notice was taken of the administrative record.

ISSUES:

Is the appeal timely?
Has the issue of separation been previously adjudicated?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

The appeal is from a decision dated October 20, 2021. It lists an appeal deadline of October 30, 2021. This is a Saturday. Appeals are due on the first nonholiday weekday ten days after the decision date. This makes the deadline November 1, 2021. Therefore, to be timely, employer's appeal needed to be filed on or before November 1, 2021. The appeal was filed on November 4, 2021. Employer received this decision on November 1, 2021.

The separation issue of January 5, 2021, was resolved in a prior claim year (original claim date 04/26/2020) in the Administrative Law Judge's decision in Appeal No. 21A-UI-15977-AD-T. The decision granting benefits was kept in place. The appeal was dismissed as employer failed to participate in the hearing. Employer received the decision, did not appeal, and that decision is final. Claimant appealed the decision and in 21B-UI-15977, the Employment Appeal Board dismissed claimant's appeal, keeping the ALJ's decision in effect.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is not timely.

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

“[u]nless 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.”

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

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 [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

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 have a reasonable opportunity to file a timely appeal. Employer received the decision on November 1, 2021, with a November 1, 2021, deadline to file the appeal. Employer set the matter aside and filed their appeal on November 4, 2021. Employer's delay in filing the appeal on November 4, 2021, was due to a decision to not immediately address the matter.

The administrative law judge concludes that 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 871 IAC 24.35(2). The administrative law judge further concludes that 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In arguendo, if the appeal is deemed timely, the administrative law judge concludes the separation at issue has been previously adjudicated for a prior claim year, has become final and accordingly, this decision is affirmed.

DECISION:

The October 20, 2021, (reference 02) unemployment insurance decision granting benefits remains in effect, as the appeal is not timely, and the appeal is **DISMISSED**.



Darrin T. Hamilton
Administrative Law Judge

March 28, 2022
Decision Dated and Mailed

dh/scn