

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRENTON P PRESCOTT

Claimant

APPEAL NO. 22A-UI-06578-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEN'S PLUMBING AND REPAIR INC

Employer

OC: 11/15/20

Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On March 16, 2022, Brenton Prescott (claimant) filed a late appeal from the January 26, 2021 (reference 02) decision that denied benefits for the week that ended November 21, 2020, based on the deputy's conclusion that the claimant was unable to work that week due to illness. After due notice was issued, a hearing was held on April 26, 2022. Claimant participated. Ben Aeikens represented the employer and presented additional testimony through Kari Aeikens. There were three appeal numbers set for a consolidated hearing: 22A-UI-06576-JT-T, 22A-UI-06578-JT-T and 22A-UI-06582-JT-T. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the reference 02 through 06 decisions, the January 23, 2021 PUA decision, DBRO, KPYX and KPY1.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Brenton Prescott is the claimant. Mr. Prescott delegated matters pertaining to his unemployment insurance claim to his wife. During the week that started November 15, 2020, Mr. Prescott's wife established an original claim for Mr. Prescott. Iowa Workforce Development deemed the claim effective November 15, 2020. Mr. Prescott's wife made weekly claims for Mr. Prescott that included a weekly claim for the week that ended November 21, 2020.

Mr. Prescott has at all relevant times been employed by Ben's Plumbing and Repair, Inc. as a full-tie installer. Mr. Prescott's usual work hours have at all relevant times been 8:00 a.m. to about 5:00 p.m., Monday through Friday. Ben and Kari Aeikens own and operate Ben's Plumbing and Repair, Inc. At the time Mr. Prescott's wife set up the unemployment insurance claim, Mr. Prescott's wage was \$25.50 an hour.

During the week of November 15, 2020, Mr. Prescott fell ill. Mr. Prescott suspected he might have COVID-19. Mr. Prescott temporarily moved out of his home to avoid exposing his

daughter to COVID-19. Mr. Prescott recalls he had a fever. Mr. Prescott considered being tested for COVID-19, but was put off by a long line of people waiting to be tested. During the week of November 15, 2020, Mr. Prescott worked nine hours on the Monday and 7.5 hours on the Tuesday, for a total of 16.5 hours. The wages for those hours totaled \$420.75. The employer had full-time work available that week, but Mr. Prescott was absent due to illness on Wednesday through Friday of that week. Mr. Prescott requested and the employer approved 23.5 hours of vacation pay for that week. With the earned wages and the vacation pay, Mr. Prescott received full-time pay for that week, \$1,020.00.

When Mr. Prescott's wife made the weekly claim for the week that ended November 21, 2020, she under-reported Mr. Prescott's weekly wages as \$350.00. Mr. Prescott does not know how his wife determined the amount of wages to report for that week.

Based on the wages reported in the weekly claim, IWD paid Mr. Prescott \$290.00 in regular state benefits for the week that ended November 21, 2020. Iowa Workforce Development did not paid Mr. Prescott Federal Pandemic Unemployment Compensation (FPUC) benefits for the week that ended November 21, 2020. Indeed, Congress did not authorize FPUC benefits for the period that included the week that ended November 21, 2020.

On January 23, 2021, Iowa Workforce Development mailed a decision to Mr. Prescott that approved Mr. Prescott for Pandemic Unemployment Assistance (PUA) benefits for the period beginning December 20, 2020.

On January 26, 2021, Iowa Workforce Development mailed three decisions, reference 02, 03, and 04, to the claimant's last-known address of record. The reference 02 decision denied benefits for the week that ended November 21, 2020, based on the deputy's conclusion that the claimant was unable to work due to illness and not available for work that week. The claimant's address of record is a street address in Hospers, Iowa, where the population is about 780. The United States Postal Service does not provide mail deliver to the claimant's home. Instead, the claimant or his spouse has to collect the mail the local post office. The claimant has resided in Hospers for more than a decade. The local postal staff know the claimant and know that his mail is to be deposited in his family's post office box. The claimant does not know whether or when the reference 02 decision was delivered to his post office box. At the time the claimant's wife filed the claimant's appeal, she indicated she had received a decision on January 26, 2021. The weight of the evidence indicates the reference 02 decision was delivered to the claimant's post office box in a timely manner. The referenced 02 stated that the decision would become final unless an appeal was postmarked by February 5, 2021 or was received by the Appeals Section by that date. The claimant did not take steps to file an appeal from the reference 02 decision by the appeal deadline or any point prior to March 16, 2022.

On March 2, 2022, Iowa Workforce Development mailed two overpayment decisions to the claimant's address of record. The reference 05 decision held the claimant was overpaid \$290.00 in regular benefits for the week that ended November 21, 2020, due to the January 26, 2021 decision that denied benefits for that week. The reference 06 decision held the claimant was overpaid \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) for the week that ended November 21, 2020, due to the January 26, 2021 decision that denied benefits for that week. Each overpayment decision stated the decision would become final unless an appeal was postmarked by March 12, 2022 or was received by the Appeals Section by that date. Each decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 12, 2022 was a Saturday and the next working day was Monday, March 14, 2022. The claimant does not know

when the overpayment decisions were delivered to his post office box. The weight of the evidence indicates the decisions were delivered in a timely manner, but that the claimant's spouse did not collect the decisions from the post office box until March 16, 2022.

On March 16, 2022, the claimant's spouse completed and transmitted an online appeal. The Appeals Bureau received the appeal on March 16, 2022 and treated it as a late appeal from the reference 02, 05, and 06 decisions.

REASONING AND CONCLUSIONS OF LAW:

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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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 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. 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.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted

by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal. The evidence establishes that the January 26, 2021 (reference 02) decision was delivered to the claimant's post office box in a timely manner, that the claimant had a reasonable opportunity to file an appeal by the February 5, 2021 deadline. The claimant presented insufficient evidence to rebut the presumption of timely delivery of the decision. The claimant unreasonably delayed filing the appeal to March 16, 2022. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals in the present matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the January 26, 2021 (reference 02) decision was untimely. The decision that denied benefits for the week that ended November 21, 2020 remains in effect.

In the event this decision regarding timeliness of appeal is reversed upon further appeal, there is sufficient evidence in the record for entry of a decision on the substantive issue without need for further hearing.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

May 11, 2022
Decision Dated and Mailed

jet/mh