IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER L HAAG
Claimant

IOWA WORKFORCE DEVELOPMENT

APPEAL NO. 08A-UI-02642-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/06/08 R: 03
Claimant: Appellant (1)

871 IAC 24.2(1)(e) – Failure to Report as Directed
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Jennifer Haag filed an appeal from the February 22, 2008, reference 03, decision that denied benefits effective February 17, 2008, based on a failure to report as directed. After due notice was issued, a hearing was held by telephone conference call on March 31, 2008. Ms. Haag participated. Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of proceedings in Appeal Number 08A-UI-01606-CT.

ISSUE:

Whether there is good cause to deem Ms. Haag's late appeal timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The February 22, 2008, reference 03, decision was mailed to Jennifer Haag's last known address of record on February 22, 2008. Ms. Haag received the decision in a timely fashion, prior to the deadline for appeal. The decision indicated that Ms. Haag was not eligible for unemployment insurance benefits. The decision further indicated as follows:

> EXPLANATION OF DECISION:
> OUR RECORDS INDICATE YOU WERE MAILED A NOTICE TO REPORT TO YOUR LOCAL WORKFORCE DEVELOPMENT CENTER. SINCE YOU DID NOT REPORT, YOU DO NOT MEET THE AVAILABILITY REQUIREMENTS OF THE LAW. BENEFITS ARE DENIED AS OF 02/17/08.
>
> TO BECOME ELIGIBLE FOR BENEFITS:
> YOU MUST REPORT, WITH THIS DECISION, TO YOU LOCAL WORKFORCE DEVELOPMENT CENTER BETWEEN 9 A.M. AND 3 P.M. TO REMOVE THIS DISQUALIFICATION.

The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 3, 2008.

The decision ended with the following paragraph:

> QUESTIONS:
> IF YOU HAVE QUESTIONS OR NEED INFORMATION, CALL THE WORKFORCE DEVELOPMENT CENTER AT (641) 684-5401 BETWEEN 9 A.M. AND 3 P.M.

The number provided was for the Ottumwa Workforce Development Center. Ms. Haag resides in Ottumwa.

Ms. Haag had another matter pending with Iowa Workforce Development. On February 15, 2008, Ms. Haag's former employer, Liberty Food Service, had appealed from a February 12, 2008, reference 02, decision that allowed benefits to Ms. Haag. On February 19, 2008, the Workforce Development Appeals Section mailed Ms. Haag a notice of hearing in Appeal Number 08A-UI-01606-CT for an appeal hearing that was scheduled for March 3, 2008 at 2:00 p.m. The hearing notice indicated on its face that the issues set for hearing were whether there was a discharge for misconduct, whether there had been a voluntary quit for good cause attributable to the employer, and whether there had been an overpayment of benefits. The notice of hearing provided clear and concise instructions directing the parties to contact the Appeals Section prior to the hearing to provide a telephone number at which each could be reached for the hearing. The hearing notice provided three telephone numbers Ms. Haag could use to contact the Appeals Section to provide a number for the hearing. None of these numbers was the same as the contact number set forth in the February 22, 2008, reference 03 decision.

Ms. Haag became confused and erroneously concluded that the February 22, 2008, reference 02 decision was merely directing her to contact the Appeals Section to provide a telephone number for the hearing in Appeal Number 08A-UI-01606-CT. Though Ms. Haag was confused, she did not follow the directions that had been set forth in the February 22, 2008, reference 02, decision. In other words, Ms. Haag did not contact her local Workforce Development Center to ask a question or obtain further information.

On February 26, 2008, Ms. Haag contacted the Appeals Section to provide a telephone number at which she could be reached for the March 3 hearing in Appeal Number 08A-UI-01606-CT. When Ms. Haag spoke with the Appeals Section clerical staff, she did not mention the February 22, 2008, reference 02 decision. Ms. Haag did not mention that she was confused and did not ask the Appeals Section clerical staff any questions about the correspondence she had received from Iowa Workforce Development. Ms. Haag participated in the March 3, 2008 hearing in Appeal Number 08A-UI-01606-CT.

Ms. Haag did not take steps to appeal the February 22, 2008, reference 03, decision until March 18, 2008. On that date, Ms. Haag went to her local Workforce Development Center and obtained the assistance of Workforce Advisor Dixie Clary. Ms. Clary assisted Ms. Haag with preparing an appeal. Ms. Haag completed the appeal and delivered it to Ms. Clary on March 18, 2008. Ms. Clary faxed the appeal to the Appeals Section on March 18, 2008.

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, subsection 10, 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 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). See also Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). 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 871 IAC 24.35(1)(b).

In this case, Ms. Haag’s appeal was filed on March 18, 2008, when she delivered the completed appeal to her local Workforce Development Center.

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). 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.

The evidence indicates that Ms. Haag failed to follow clear instructions provided on the face of the February 22, 2008, reference 03 decision. She failed to immediately report to her local Workforce Development office as indicated in the decision. She failed to use the number provided on the decision to obtain answers to any questions she might have. She failed to take steps to file a timely appeal of the February 22, 2008 decision. In addition, Ms. Haag failed to ask for clarification from Workforce Development staff when she was on the phone with an Appeal Section representative on February 26, 2008.

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. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 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).

DECISION:

The Agency representative's February 22, 2008, reference 03, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Ms. Haag should contact her local Workforce Development office as soon as possible to resolve the failure to report issue.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/kjw