

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMIE J BUTTZ

Claimant

APPEAL NO. 18A-UI-06212-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY COMPANY

Employer

OC: 04/29/18

Claimant: Appellant (1)

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Tammie J. Buttz, the claimant, filed an appeal from a representative's unemployment insurance decision dated May 24, 2018, reference 03, which denied benefits, finding that the claimant had voluntarily left employment on March 6, 2018 by failing to report to work for three days in a row and not notifying the employer of the reason. After due notice was provided, a telephone conference hearing was held on June 22, 2018. Claimant participated. The employer participated by Ms. Espnola Cartmill, Attorney at Law, and witnesses Ms. Carolyn Cross, Human Resource Manager, Mr. Lee Trask, Vice President of Manufacturing, Mr. Alex Boone, Team Manager and Ms. Salina Naenphan, Team Leader. Employer Exhibits 1 through 6 were admitted into the hearing record.

ISSUE:

Whether the appeal filed by Tammie J. Buttz was timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on May 24, 2018. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 3, 2018. The appeal was not filed by Ms. Buttz until June 5, 2018, which is after the date noticed on the disqualification decision.

Ms. Buttz received the disqualification decision within the ten day appeal period. Ms. Buttz read the decision and disagreed with it and also noted the due date that was noticed on the decision itself. Ms. Buttz elected not to file an appeal in this matter within the ten day statutory time limit, because she was awaiting a decision on a separation from employment that had taken place after her employment with Van Diest Supply Company had ended.

Because the due date on the disqualification decision fell on a Sunday, the due date was automatically moved until the next working day, Monday, June 4, 2018. Ms. Buttz did not file her appeal until the following day, June 5, 2018.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 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 claimant received the disqualification decision, read it, disagreed with it and noted the due date by which an appeal must be postmarked or filed. Although this decision disqualified the claimant for benefits based upon her employment with Van Diest Supply Company, she elected to delay filing her appeal because she hoped to be allowed benefits based upon a subsequent job separation and was waiting for the results from a fact-finders call on that job separation.

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 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 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 representative's unemployment insurance decision dated May 24, 2018, reference 03, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn