

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN WENDELBOE
Claimant

APPEAL 20A-UI-13155-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/19/20
Claimant: Appellant (1)**

Iowa Code § 96.4(4) – Eligibility in a Second Benefit Year
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Justin Wendelboe (claimant) appealed a representative's August 28, 2020, decision (reference 01) that concluded he had not been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year and was, therefore, not eligible to receive unemployment insurance benefits as of July 19, 2020. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on December 16, 2020. The claimant participated personally.

Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the appeal was filed in a timely manner, and if so, whether the claimant has requalified for benefits.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant filed for unemployment insurance benefits with an effective date of July 21, 2019. His weekly benefit amount during his 2019 claim year was \$500.00. After his 2019, benefit year ended, he filed a second year of benefits effective July 19, 2020. He earned insured wages during or after his previous claim year in the second quarter of 2020, from Acro Services Corporation in the amount of \$1,729.00.

A disqualification decision was mailed to the claimant's last known address of record on August 28, 2020. The decision was received by the claimant within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 8, 2020. The appeal was not filed until October 20, 2020, which is after the date noticed on the disqualification decision.

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 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).

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.

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).

The next issue is whether the claimant has requalified for benefits.

Iowa Code section 96.4(4)a-c provides:

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

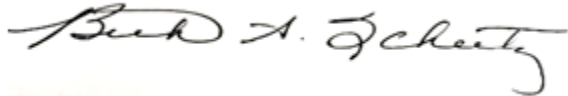
4. a. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this paragraph in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

c. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least eight times the individual's weekly benefit amount, as a condition to receive benefits in the next benefit year.

In order to be eligible to receive unemployment insurance benefits in a second benefit year, the claimant must show that he has been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year. The claimant has not provided evidence to prove wages during the relevant period. Therefore, the claimant has not requalified for benefits since the separation and since the prior claim year separation decision. Benefits are denied.

DECISION:

The unemployment insurance decision dated August 28, 2020, reference 01, is affirmed. The appeal is not timely. The claimant is not eligible to receive unemployment insurance benefits because he has not been paid insured wages during or after the previous claim year of at least eight times the weekly benefit amount of the previous claim year unemployment insurance benefits.



Beth A. Scheetz
Administrative Law Judge

December 29, 2020
Decision Dated and Mailed

bas/mh