

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY HENDRICKS
Claimant

APPEAL NO. 06A-UI-11406-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATRIX METALS LLC
MATRIX METALS
Employer

OC: 01/01/06 R: 12
Claimant: Appellant (1)

Iowa Code section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Holly Hendricks filed an appeal from the November 13, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on December 13, 2006. Ms. Hendricks participated. The administrative law judge took official notice of the Agency's administrative file and received Department Exhibits D-1 and D-2 into evidence.

ISSUE:

Whether the claimant's appeal was timely. It was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The November 13, 2006, reference 02, decision was mailed to Holly Hendricks' last-known address of record on November 13, 2006. Ms. Hendricks received the decision in a timely fashion, prior to the deadline for appeal. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 23, 2006. The decision also indicated that if the deadline for appeal fell on a holiday, the deadline would be extended to the next working day. November 23, 2006 was the Thanksgiving holiday and the next working day was Monday, November 27, 2006. The appeal was not filed until November 28, 2006, when Ms. Hendricks went to the Keokuk Workforce Development Center, completed an appeal form, and delivered the form to the Center staff. The Keokuk Workforce Development Center faxed the appeal to the Appeals Section the same day.

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). 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). The claimant's appeal was filed on November 28, 2006, the date on which the claimant delivered the appeal to the Keokuk Workforce Development Center.

The claimant asserts that she mailed an appeal prior to the deadline and then made a trip to the Workforce Development Center to complete a second appeal. Having carefully considered the claimant's testimony, the administrative law judge finds the claimant's assertion not credible. In addition to finding the claimant's testimony not credible, the administrative law judge notes that no such appeal has ever been received at the Appeals Section and no such appeal has apparently been returned to the claimant as undeliverable, despite the considerable lapse of time since the claimant allegedly mailed the appeal. The administrative law judge finds the implied assertion that an allegedly mailed appeal disappeared enroute not credible.

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 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 November 13, 2006, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw