

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMIE L PREW
Claimant

DIAMOND JO LLC
Employer

APPEAL NO. 21A-UI-21399-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Jamie Prew, filed a late appeal from the November 20, 2020, reference 02, decision that denied benefits effective August 16, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on December 2, 2021. The claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. There were four matters set for a consolidated hearing: 21A-UI-21398-JTT, 21A-UI-21399-JTT, 21A-UI-21400-JTT, and 21A-UI-21402-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, KPYX, NMRO and the reference 01, 02, 03 and 04 decisions.

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: On November 20, 2020, Iowa Workforce Development Benefits Bureau mailed two decisions to the claimant at the claimant's Galena, Illinois last-known address of record. The reference 01 decision denied benefits effective June 7, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. The reference 02 decision denied benefits effective August 16, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. Each decision stated that the decision would become final unless an appeal was postmarked by November 30, 2020 or was received by the Appeal Section by that date. The claimant received the decisions in a timely manner prior to the appeal deadline, but did not take steps to file an appeal from either decision by the November 30, 2020 deadline or at any point prior to September 25, 2021.

On September 23, 2021, Iowa Workforce Development mailed the reference 03 decision to the claimant. The reference 03 decision held the claimant was overpaid \$1,953.00 in regular

benefits for 12 weeks between April 12, 2020 and July 4, 2020, based on an earlier decision that disqualified the claimant for benefits in connection with the able and available determination. The reference 03 decision included an October 3, 2021 deadline for appeal.

At about the same time the Benefits Bureau mailed the reference 03 decision to the claimant, the Benefits Bureau also mailed the reference 04 decision to the claimant. The reference 04 decision held the claimant was overpaid \$7,200.00 for 12 weeks ending July 4, 2020 and erroneously referred to a November 19, 2020 overpayment decision. The reference 04 overpayment decision included a September 30, 2021 deadline for appeal.

On September 25, 2021, the claimant completed and transmitted appeals from the reference 03 and reference 04 overpayment decisions. The Appeals Bureau received the appeals on September 25, 2021 and treated them as also late appeal from the reference 01 and reference 02 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. 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 Iowa Administrative Code rule 871-24.35(1)(b).

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 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 evidence in the record establishes the claimant received the November 20, 2020, reference 02, decision in a timely manner, had a reasonable opportunity to file an appeal by the November 30, 2020 appeal deadline, but unreasonably delayed filing the appeal until September 25, 2021. The late filing of the appeal was attributable to the claimant's inaction on the matter and was not attributable to 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 from the November 20, 2020 decision was untimely, the administrative law judge lacks jurisdiction to disturb that decision. 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 November 20, 2020, reference 02, decision is untimely. The decision that denied benefits for the period beginning August 16, 2020, based on the determination that the claimant was not partially unemployed, stands. However, because no weekly claims were made for the period on or after August 1, 2020, the reference 02 decision regarding the period beginning August 16, 2020 is moot and has not impact on the claimant's future eligibility for benefits.



James E. Timberland
Administrative Law Judge

January 12, 2022
Decision Dated and Mailed

jet/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.