

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOAN M LUND
Claimant

APPEAL NO. 21A-UI-04336-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METHODIST MANOR
Employer

OC: 04/05/20
Claimant: Appellant (1R)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Leave of Absence

STATEMENT OF THE CASE:

The claimant, Joan Lund, filed a late appeal from the July 17 2020, reference 01, decision that denied regular state benefits effective April 5, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and not available for work. After due notice was issued, a hearing was held on April 7, 2021. The claimant participated. The employer did not provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-04337-JTT. The administrative law judge took official notice of the July 17 2020, reference 01, decision, the January 25, 2021, reference 02, decision, and the record of regular state benefits paid to the claimant (DBRO).

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 July 17, 2020, Iowa Workforce Development mailed the July 17, 2020, reference 01, decision to the claimant's Storm Lake last-known address of record. The decision denied regular state benefits effective April 5, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and not available for work. the decision stated that the decision would be final unless an appeal was postmarked by July 27, 2020 or was received by the Appeals Bureau by that date. The claimant received the decision in a timely manner. The claimant did not take steps to file an appeal by the July 27, 2020 appeal deadline or at any point prior to January 31, 2021.

On January 25, 2021, Iowa Workforce Development mailed the January 25, 2021, reference 02, decision to the claimant's last-known address of record. The decision stated that the claimant had been overpaid \$2,058.00 in regular benefits for the period of April 5, 2020 through July 11, 2020, based on the earlier decision that denied benefits.

On January 31, 2021, the claimant completed and transmitted an online appeal from the reference 02 overpayment decision. The Appeals Bureau received the decision that same day and treated it as also a late appeal from the earlier decision that denied benefits.

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).

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). One 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 claimant's appeal from the July 17 2020, reference 01, was untimely. The claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the July 27, 2020 deadline, but did not take steps to file an appeal by that date. Indeed, further unreasonably delayed filing the appeal for several months until she finally filed an appeal on January 31, 2021. Because the late filing of the appeal was not attributable to Iowa Workforce Development or to 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 was untimely, the administrative law judge lacks jurisdiction to disturb the July 17, 2020, reference 01, 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 was untimely. The July 17 2020, reference 01, decision that denied regular state benefits effective April 5, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and not available for work, remains in effect.

This matter is remanded to the Benefits Bureau for consideration, as the Benefits Bureau deems appropriate, of whether the effective date of the claimant's PUA approval should be adjusted to an earlier date than July 12, 2020.



James E. Timberland
Administrative Law Judge

April 19, 2021
Decision Dated and Mailed

jet/scn