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

JEFFREY S OULMAN
Claimant

APPEAL NO: 19A-UI-00940-JC-T

ADMINISTRATIVE LAW JUDGE DECISION

NORTH IOWA LUMBER & DESIGN INC
Employer

OC: 12/02/18
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 27, 2018, (reference 01) unemployment insurance decision that denied benefits based upon the claimant being on an approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on February 15, 2019. The hearing was held jointly with 19A-UI-00941-JCT. The claimant participated personally. The employer participated through Jene Werner, manager. Ellen Meyer, office manager, also testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

The claimant established his claim with an effective date of December 2, 2018, while he was on an approved leave of absence. He permanently separated from employment on January 11, 2019. That separation has not yet been adjudicated by the Benefits Bureau.

An initial unemployment insurance decision (Reference 01) resulting in denial of benefits because the claimant was on a leave of absence was mailed to the claimant's last known address of record on December 27, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 6, 2019. Because January 6, 2019 was a Sunday, the final day to appeal was extended to January 7, 2019. The claimant received the decision on December 30, 2018 within the appeal period. The appeal

was not filed until February 4, 2019, which is after the date noticed on the disqualification decision (Department Exhibit 1).

The claimant was hospitalized January 3-6, 2019. He was released on January 6, 2019 and did not make an attempt to file an appeal January 6 or 7, within the appeal period. He was then busy with job searches and did not pursue an appeal until he received the reference 03 decision which issued a work search warning. He filed the appeal on February 4, 2019, four weeks after the prescribed due date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:
Filing – determination – appeal.
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.

Iowa Admin. Code r. 871-24.35(2) provides:
Date of submission and extension of time for payments and notices.
(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.
a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 claimant did receive the initial decision within the prescribed period to appeal but was hospitalized for three days and did not attempt to file the appeal after his release, even though he still had time within the prescribed period to appeal. He then delayed filing an appeal for weeks as he was busy, thereby causing a four week delay. The administrative law judge concludes that failure to follow the clear written instructions 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 Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

REMAND: The January 11, 2019 permanent separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The December 27, 2018, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND: The January 11, 2019 permanent separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

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