

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUEEN M KPOO-SIEDOMA
Claimant

APPEAL NO. 10A-UI-05939-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

**OC: 03/07/10
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 31, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for June 10, 2010. The employer responded to the hearing notice. The claimant did not respond to the hearing notice. The administrative law judge called the employer and advised the employer that a decision would have to be entered on the record concerning the timeliness of the claimant's appeal since the claimant did not respond to the hearing notice. Official notice is taken of agency records.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

A representative's decision was issued on March 31, 2010, stating that the claimant was not eligible to receive unemployment insurance benefits. In that decision, the representative stated that the decision was final unless an appeal is postmarked by April 10, 2010, or received by Iowa Workforce Development Appeals Section by that date.

The claimant filed an appeal, which was received by the Appeals Section on April 20, 2010. The letter was postmarked on April 19, 2010.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 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 administrative law judge concludes that the failure have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). There is also no evidence of agency error. The claimant did not participate in the hearing and there is no evidence on why she delayed the filing of her appeal. Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claimant's claim for unemployment insurance benefits.

DECISION:

The decision of the representative dated March 31, 2010, reference 01, is affirmed. The claimant is not eligible for unemployment insurance benefits effective March 7, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css