

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRSTIN D HAHN
Claimant

APPEAL NO. 16A-UI-06680-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

OC: 05/01/16
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Kirstin Hahn filed an appeal from the May 26, 2016, reference 01, decision that denied benefits effective May 1, 2016, based on an agency conclusion that Ms. Hahn was not partially unemployed from Allsteel, Inc. After due notice was issued, a hearing was held on July 21, 2016. Ms. Hahn participated. Steve Zaks of Employers Edge represented the employer and presented testimony through Katina McDaniel and Brenden Meeker. The hearing in this matter was consolidated with the hearing in Appeal Numbers 16A-UI-06681-JTT and 16A-UI-07460-JTT. Exhibits One through Five and Department Exhibits D-1 through D-6 were received into evidence.

ISSUE:

Whether Ms. Hahn's appeal from the May 26, 2016, reference 01, decision was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 26, 2016, Iowa Workforce Development mailed a copy of the May 26, 2016, reference 01, decision to claimant Kirstin Hahn at her last-known address of record. The decision denied benefits effective May 1, 2016, based on an agency conclusion that Ms. Hahn was not partially unemployed from Allsteel, Inc. The decision stated that an appeal from the decision must be postmarked by June 5, 2016 or be received by the Appeals Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday or legal holiday, the appeal period would be extended to the next working day. Saturday, June 5, 2016 was a Sunday and the next working day was Monday, June 6, 2016. The decision contained instructions for filing an appeal and a number Ms. Hahn could call if she had any questions about the decision. Ms. Hahn received the decision on May 29, 2016. Ms. Hahn did not take any steps to file an appeal from the decision by the June 6, 2016 extended appeal deadline. On June 9, 2016, Iowa Workforce Development mailed a copy of the June 9, 2016, reference 02, overpayment decision to Ms. Hahn. The overpayment decision stated that Ms. Hahn had been overpaid \$1,391.00 in benefits that she would have to repay to Iowa Workforce Development. The

repayment decision had a June 19, 2016 appeal deadline. On June 14, 2016, Ms. Hahn accessed the Iowa Workforce Development website and completed an appeal from the overpayment decision. The Appeals Bureau treated Ms. Hahn's appeal from the overpayment decision as also an appeal from the May 26, 2016, reference 01, decision that denied benefits.

On July 1, 2016, a Workforce Development representative entered a reference 03 decision that addressed the partial unemployment issue for the period beginning June 5, 2016.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

Ms. Hahn filed her appeal on June 14, 2016, when she completed the online appeal and when the Appeals Section received the appeal.

More than ten calendar days elapsed between the mailing date of the May 26, 2016, reference 01, decision and the June 14, 2016 appeal. 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 Ms. Han had a reasonable opportunity to file a timely appeal from the May 26, 2016, reference 01, decision, but elected not to file an appeal by the June 6, 2016 appeal deadline. The late filing of the appeal from the May 26, 2016, reference 01, decision was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was untimely, Ms. Hahn failed to preserve her right to challenge the May 26, 2016, reference 01 decision and 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).

Because the Benefits Bureau entered a separate decision that addressed whether Ms. Hahn was partially unemployed for the period beginning June 5, 2016, the reach of the May 26, 2016, reference 01, decision is limited to the period of May 1, 2016 through June 4, 2016. The decision that denied benefits for that period, based on an agency conclusion that Ms. Hahn was not partially unemployed during that period remains in effect.

DECISION:

The May 26, 2016, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision that denied benefits effective May 1, 2016, based on an agency conclusion that the claimant was not partially unemployed remains in effect. However, the reach of that decision is limited to the period of May 1, 2016 through June 4, 2016.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs