

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS J NETOLICKY
Claimant

APPEAL NO. 19A-UI-00378-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEI INC
Employer

OC: 12/09/18
Claimant: Appellant (1)

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Thomas J. Netolicky filed an appeal from a representative's unemployment insurance decision dated January 4, 2019, reference 02, which denied unemployment insurance benefits as of December 9, 2018, finding that the claimant was not able to perform work due to injury. After due notice was provided, a telephone hearing was held on January 30, 2019. Claimant participated. The employer participated by Brian Woods, Office Manager. Claimant's Exhibit 1 was admitted into the hearing record.

ISSUE:

Whether the appeal was filed timely?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: a disqualification decision was mailed to the claimant's last known address of record on January 4, 2019. The claimant received the decision on January 7, 2019. The decision contained a warning that an appeal must be postmarked, faxed or returned by January 14, 2019. The appeal was not filed until January 15, 2019, which is after the deadline listed on the disqualification decision.

The disqualification decision dated January 4, 2019 states that Mr. Netolicky is not eligible to receive unemployment insurance benefits and denies benefits as of December 9, 2018, stating as the reason that Mr. Netolicky is not able to perform work due to injury. In addition to the information provided about the date the appeal must be postmarked or received by the Appeals section, it also contained a telephone number to be called with any questions.

Mr. Netolicky had received a decision a few days before from Iowa Workforce Development that allowed benefits without disqualification on his job separation. That decision stated that Mr. Netolicky was eligible for benefits as long as he met all other eligibility requirements of Iowa law. On January 15, 2019, Mr. Netolicky went to the Cedar Rapids IowaWorks office to ask for clarification of the two decisions. At that time, he filed his appeal from the January 4, 2019,

reference 02 decision that denied benefits as of December 9, 2018, because he was not able to work due to injury.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

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.

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 26.4(2) and 871 IAC 24.35(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). Appeals are considered filed the date the Appeals Bureau receives them if filed via email, fax, or the online appeal form.

The record in this case shows that the claimant received the adjudicator's January 4, 2019, reference 02 decision allowing sufficient time to file an appeal, or to resolve any questions he may have by using the telephone number provided on the decision itself. Mr. Netolicky did not file an appeal or seek to clarify any questions that he may have had until January 15, 2019, after the due date of January 14, 2019, stated on the decision itself.

The Iowa Supreme Court 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 the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure 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, 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). Iowa Code §96.6(2).

DECISION:

The representative's unemployment insurance decision dated January 4, 2019, reference 02, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn