

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTOPHER R GREENE
Claimant

AIR CARE HEATING AIR LLC
Employer

APPEAL NO. 21A-UI-08196-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Respondent (2R)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from the February 12, 2021, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 11, 2021. The claimant did participate. The employer did participate through Chris Furlow and Steve Etherington. Employer's exhibits 1-2 were admitted to the record.

ISSUES:

Whether the appeal is timely?

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the employer's last known address of record on February 12, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 22, 2021. The appeal was not filed until March 23, 2021, which is after the date noticed on the disqualification decision. Employer stated that the mailing address listed for the business is different from the physical address. Employer moved the physical business around the time of the decision being entered in this matter. For some reason, employer's documents were not received at the billing address for a month. Employer stated that mail from February 12-19, 2021 was not received until March 22, 2021. This not only included the decision in this matter, but many invoices and bills that should have been received at or around the same time.

Claimant works as an HVAC installer for employer. The job is physically strenuous and involves lifting and bending. At some in June, 2020 claimant developed a hernia. Claimant did not say that the hernia was work-related. He has not filed a worker's compensation claim. On July 27, 2020 claimant's doctor prepared a note excusing claimant from work until August 14. Claimant

was to have hernia surgery and be off for six additional weeks after the surgery. Instead, claimant injured himself in a different matter outside from work and surgery was put off.

As claimant was not working, he did not have money to save for his surgery. Claimant also did not have money to pay insurance that allowed him to go back to a doctor. Claimant sat off from work until on or around November 29, 2020. Claimant, who was off from work as a result of a hernia, asked employer if he could return to work. Employer asked for a medical release from a doctor to allow for his return. Claimant had not been to a doctor for months, as he no longer was covered by insurance because he hadn't been working and hadn't been paying for coverage. Claimant did not produce a release and began filing for unemployment.

To date claimant still has not produced a release that would allow him to return to work.

Employer stated that claimant still has a job waiting for him as soon as he is able and available to work. Absent a release without restrictions, employer fears that claimant will reinjure himself as he is not physically able to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 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 the appellant did not have a reasonable opportunity to file a

timely appeal, as not only was the representative's decision over a month late in arriving to employer, but a good deal of other documents that should have been received in the same time period.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was 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 therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains 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 Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

- 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Inasmuch as the injury was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The February 12, 2021, reference 01, decision is reversed. The appeal in this case was deemed timely. Claimant is not eligible to receive unemployment insurance benefits, effective November 29, 2020, as claimant has not shown that he has received a full medical release to return to work. This matter is remanded to the benefits bureau for a determination of overpayment of benefits.



Blair A. Bennett
Administrative Law Judge

May 18, 2021
Decision Dated and Mailed

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