

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DEBRA M JOHNSON ROBY
3419 – 1ST ST #6
DES MOINES IA 50313

ACCESS DIRECT TELEMARKETING INC
c/o JOHNSON AND ASSOCIATES
NOW - TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-03742-RT
OC: 02-23-03 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, Debra M. Johnson Roby, filed an appeal from an unemployment insurance decision dated February 13, 2004, reference 07, denying unemployment insurance benefits to the claimant. After due notice was issued, a telephone hearing was held on May 19, 2004, with the claimant participating. Camilla Johnson, the claimant's daughter, was available to testify for the claimant but not called because her testimony would have been repetitive and unnecessary. The employer, Access Direct Telemarketing, Inc., chose not to participate in the hearing. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Department Exhibit 1 was admitted into evidence. This matter was originally scheduled for a telephone hearing on April 27, 2004 at 10:00 a.m. and rescheduled at the claimant's request.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit 1, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on February 13, 2004, reference 07, determining that the claimant was not eligible to receive unemployment insurance benefits because records indicate she was discharged from work on December 19, 2003 for failure to follow instructions in the performance of her job. This decision was sent to the claimant at the same address as shown on her attempted appeal. The claimant received this decision. That decision indicated that an appeal had to be postmarked or otherwise received by Iowa Workforce Development Appeals Section by February 23, 2004. However, the claimant's appeal as shown at Department Exhibit 1, was dated and left at the local Iowa Workforce Development Office on April 1, 2003, over five weeks late. The claimant did receive the decision but did not remember when. The claimant had been tending to her ill mother in Wisconsin for three to four weeks and simply did not have time to do the appeal. The claimant did have other siblings that could help her tend to her mother.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant filed a timely appeal, or, if not, whether the claimant demonstrated good cause for such delay. The claimant's appeal was not timely and the claimant has not demonstrated good cause for delay in the filing of her appeal and, as a consequence, the appeal should not be accepted and the administrative law judge has no jurisdiction to reach the remaining issue.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach that issue.

Iowa Code Section 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 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 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the claimant has the burden to prove that her appeal was timely or that she had good cause for delay in the filing of her appeal. The administrative law judge concludes that the claimant has not met her burden of proof to demonstrate by a preponderance of the evidence either that her appeal was timely or that she had good cause for a delay in the filing of the appeal. As noted in the findings of fact, the claimant's appeal was over five weeks late. The claimant testified that she did receive the decision but did not remember when. She testified that the reason that the appeal was late was that she was in Wisconsin tending to her ill mother for three to four weeks. The claimant further stated that she had no time to do the appeal. The claimant conceded that she had other siblings to help tend to her mother. Even if the claimant was in Wisconsin for three to four weeks, the claimant's appeal was over five weeks late and she must have been in Iowa for enough time to file the appeal. Assuming that the claimant received the decision properly since it was mailed to the same address as contained on the claimant's own appeal, she would have had over six weeks to file the appeal but she was only in Wisconsin according to her own testimony three to four weeks. There is no evidence that the claimant's delay was as a result of any error on the part of Iowa Workforce Development or the U.S. Postal Service. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated February 13, 2004, reference 07, is not timely and the claimant has not demonstrated good cause for a delay in the filing of her appeal. Therefore, the administrative law judge

concludes that the appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the other issues, including the separation from employment. The administrative law judge further concludes that the representative's decision of February 13, 2004, reference 07, should remain in full force and effect.

DECISION:

The representative's decision of February 13, 2004, reference 07, is to remain in full force and effect. The claimant, Debra M. Johnson Roby is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits. The claimant's attempted appeal is not timely and the claimant has not demonstrated good cause for its delay.

dj/b