

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

SELIMA GABELJIC
3420 – 64TH ST
URBANDALE IA 50322

RACING ASSOCIATION OF
CENTRAL IOWA
D/B/A PRAIRIE MEADOWS
PO BOX 1000
ALTOONA IA 50009-1000

Appeal Number: 05A-UI-01103-RT
OC: 08-22-04 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, Selima Gabeljic, filed an appeal from an unemployment insurance decision dated September 14, 2004, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on February 17, 2005, with the claimant participating. The claimant was assisted by an interpreter, Zijo Suceska. Gina Vitiritto Robinson, Employee Relations Manager, participated in the hearing for the employer, Racing Association of Central Iowa, doing business as Prairie Meadows. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on September 14, 2004, reference 02, determining that the claimant was not eligible to receive unemployment insurance benefits because she was discharged from work on August 10, 2004 for dishonesty in connection with her work. This decision was sent to the claimant on that date and received by the claimant. This decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by September 24, 2004. However, the claimant attempted to appeal the decision by leaving her appeal at the customer service desk at Iowa Workforce Development on February 1, 2005 as shown at Department Exhibit One. The claimant's appeal was over four months late. The reason given by the claimant for the delay in filing her appeal was first that she was sick for three or four months. Much later in the hearing the claimant then stated that she was concerned about her discharge and, therefore, did not appeal promptly. The claimant said nothing in the hearing about not understanding the decision that was sent to her and the administrative law judge notes that the claimant's son speaks English and interprets for the claimant when necessary. The claimant filed for unemployment insurance benefits effective August 22, 2004 and made eight weekly claims through benefit week ending October 16, 2004. She then discontinued filing claims for sometime but then filed for three more weeks of benefits: February 5, 12, and 19, 2004 but has received no benefits.

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 failure. The administrative law judge concludes that the claimant's appeal was not timely and the claimant did not demonstrate good cause for a delay in the filing of her appeal and, as a consequence, the administrative law judge has no jurisdiction to reach the remaining issue.
2. Whether the claimant's separation from the employment was a disqualifying event. The administrative law judge concludes 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 the delay in the filing of her appeal. The administrative law judge concludes that the claimant has failed to meet 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 her appeal. The claimant stated that she did receive a copy of the decision dated September 14, 2004, reference 02. That decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by September 24, 2004. However, the claimant attempted to appeal by leaving an appeal with the customer service desk at Iowa Workforce Development on February 1, 2005, making the claimant's attempted appeal over four months late. The claimant's appeal is clearly not timely. The administrative law judge also concludes that the claimant did not demonstrate good cause for a delay. In the claimant's appeal she states that she did not understand the language but she said nothing about that at the hearing. Further, the claimant's son speaks English and can interpret for the claimant on occasion. Finally, even if the claimant did not understand the language, she should have immediately obtained assistance when reading the decision so she could learn what the decision stated and the appeal rights. The claimant did not do so but

apparently waited over four months to appeal. At the hearing the claimant said she did not appeal because she was sick and after being asked several times how long she was sick, the claimant said three or four months. This is not credible because the claimant filed weekly claims for eight weeks and received no benefits. The claimant apparently was well enough to file weekly claims and conduct a job search. Therefore, she should have been well enough to have filed an appeal. Further, filing weekly claims for eight weeks without receiving any benefits should have put the claimant on notice that she was not getting benefits and she should have inquired promptly about why she was not getting benefits. The claimant did not do so. Later in the hearing the claimant stated that she was concerned about her firing and, therefore, did not appeal promptly. This is not good cause for a delay in the filing of her appeal. The administrative law judge might have been more understanding had the claimant's delay been several weeks so that she could get assistance in reading the decision but the administrative law judge cannot believe that a delay of four months was necessary. There is no evidence that either Iowa Workforce Development or the U.S. Postal Service contributed to the delay in the filing of the claimant's appeal. The claimant had a reasonable amount of time to file her appeal but did not do so. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated September 14, 2004, reference 02, 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 claimant's appeal should not be accepted and that he lacks jurisdiction to make a determination with respect to the other issue presented, the separation from employment. The administrative law judge finally concludes that the representative's decision of September 14, 2004, reference 02, should remain in full force and effect.

DECISION:

The representative's decision of September 14, 2004, reference 02, is to remain in full force and effect. The claimant, Selima Gabeljic, 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.

pjs/tjc