

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLAUDIA ELZINGA

Claimant

APPEAL 17A-UI-11568-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHERN ENTERPRISES INC

Employer

OC: 07/23/17

Claimant: Respondent (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(5) – Benefit Duration - Business Closing
Iowa Admin. Code r. 871-24.29(1) and (2) – Business Closing

STATEMENT OF THE CASE:

The employer filed an appeal from the October 20, 2017, (reference 06) unemployment insurance decision that granted the request to redetermine the claim based upon a business closure. The parties were properly notified about the hearing. A telephone hearing was held on November 30, 2017. The claimant participated by way of written statement (Claimant Exhibit A). The employer participated through Emily Covey, general manager. Employer Exhibits 1 through 6 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the appeal timely?

Is the claimant eligible to have the monetary determination recalculated due to business closing?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: An initial unemployment insurance decision regarding the employer business closing was mailed to the employer's last known address of record on October 20, 2017. This is a valid mailing address for the employer. The employer uses its corporate address for the address of record for mail with Iowa Workforce Development. Ms. Covey, who responded to the initial decision and filed the appeal, resides in Sioux City. The employer relies upon its part-time secretary, Jolene, to collect the mail approximately one or two times per week, and on no set schedule. Then approximately once a week, not on a schedule, mail is collected in a "tub" and manually driven to Ms. Covey to respond.

Ms. Covey indicated Jolene was still employed, but did not participate in the hearing or provide a written statement. Ms. Covey stated she is unsure if Jolene worked during the appeal period,

when she worked, or when she collected the mail that was then forwarded to Ms. Covey on October 30, 2017, when someone delivered the tub of mail to her. More likely than not, the employer had to receive the mail before October 30, 2017 to then manually forward to Ms. Covey in Sioux City.

The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 30, 2017. Ms. Covey personally read the decision on October 30, 2017. The appeal was not filed until October 31, 2017 (Employer Exhibit 1), which is after the date noticed on the unemployment insurance decision.

After separating from this employer on July 23, 2017 due to the Orange City location closing, the claimant began a new period of employment with this employer at its Sioux Center location from September 28, 2017 until November 3, 2017 and been permanently separated from employment. That separation has not yet been determined at the claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the employer's appeal is untimely.

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, subsections 10 and 11, 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 unemployment insurance 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. It is the employer's choice to use a two-step system to receive and respond to its mail by having one person in Sheldon, Iowa check the mail one or two times a week, and then manually sending it to Ms. Covey to respond. Understandably, between the infrequent, non-routine checking of the mail in Sheldon and then approximately once per week forwarding of mail to Ms. Covey in Sioux City, there could be a delay to the employer's response to time sensitive mail. However, this is a business decision.

The credible evidence presented is the employer received the initial decision in its Sheldon office within a timely period to appeal but delayed filing its appeal until October 31, 2017, after mail was forwarded to Sioux City for Ms. Covey's handling (Employer Exhibit 1). The employer has not shown any good cause for failure to comply with the jurisdictional time limit or that the delay 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 not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

REMAND: The claimant's permanent separation from employment on November 3, 2017 with this employer's Sioux Center location is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The October 20, 2017, (reference 06) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND: The claimant's permanent separation from employment on November 3, 2017 with this employer's Sioux Center location is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn