

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GINA K STEWART
Claimant

APPEAL 19A-UI-00301-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/11/18
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Available for work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 26, 2018 (reference 04) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to report for a reemployment services appointment. The parties were properly notified of the hearing. A telephone hearing was held on January 28, 2019. The hearing was held jointly with Appeal 19A-UI-00311-JC-T. The claimant participated personally. Claimant Exhibit A was admitted. 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 able to work and available for work December 23, 2018 through January 5, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of November 11, 2018. An initial unemployment insurance decision (Reference 04) resulting in ineligibility was mailed to the claimant's last known address of record on December 26, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 5, 2019. Because January 5, 2019 was a Saturday, the final day to appeal was extended to Monday, January 7, 2019. She received the decision within the appeal period.

On January 3, 2019, the claimant contacted an IWD representative (Bree) to help update her records. She specifically asked Bree if she needed to file an appeal to the reference 04 decision and was told that her file was being reviewed by management, and no appeal was needed. The claimant took the representative's advice. When the claimant learned she needed

to file an appeal after all, it was after the prescribed period to appeal. The appeal was not filed until January 12, 2019, which is after the date noticed on the disqualification decision (Claimant Exhibit A).

The initial decision was rendered in response to the claimant informing her Workforce Advisor that she would be unable to attend a reemployment services appointment on December 31, 2018, because she had planned to take a family vacation. The Workforce Advisor then issued the reference 04 decision on December 26, 2018, stating the claimant was ineligible to receive benefits for the future period of December 23, 2018 through January 5, 2019 due to her vacation.

However, the claimant's plans changed and she did not end up going on the vacation due to the December 27, 2018 stroke and subsequent December 31, 2018 funeral of her grandmother. She did contact her Workforce Advisor, who advised her that she would be moved to a new advisor and the class was rescheduled. She also contacted customer service on January 3, 2019 to update IWD that she had been able to and available for work, and made her job search contacts as required for the two weeks in question, even with her grandmother's passing away.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United

States postal service, the division shall issue an appealable decision to the interested party.

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).

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. 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).

Based on the evidence presented, the claimant sought guidance from IWD on January 3, 2019, by calling the customer service line. She specifically asked whether she needed to file an appeal to the unfavorable decision, which the representative spoke to her about, and was advised no appeal was needed. This incorrect guidance led to the claimant's delay in filing her appeal until January 12, 2019. The administrative law judge concludes that the claimant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was *due to an Agency error or misinformation* pursuant to Iowa Admin. Code r. 871-24.35(2). The claimant made a good faith effort to address the initial decision within the prescribed period to appeal and therefore her appeal shall be accepted as timely.

In addition, the administrative law judge concludes the claimant was able to and available for work during the period of December 23, 2018 through January 5, 2019.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly

and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Based on the evidence presented, the claimant was able to and available for work December 23, 2018 through January 5, 2019. The claimant has made appropriate employer contacts each week in which claimant has filed weekly-continued claims for benefits. Benefits are allowed during this period, provided she is otherwise eligible and meets all other requirements.

DECISION:

The December 26, 2018, (reference 04) unemployment insurance decision is reversed. The appeal is timely. The claimant was able to and available for work December 23, 2018 through January 5, 2019. Benefits are allowed, provided she is otherwise eligible and meets all other requirements of Iowa law.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn