

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOHN S BOS
Claimant

APPEAL NO. 14A-UI-10721-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUSCATINE POWER & WATER
Employer

OC: 05/11/14
Claimant: Appellant (1)

Section 96.5(7) – Vacation Pay Correctly Deducted
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

John Bos filed an appeal from a representative's decision dated September 15, 2014 (reference 02) which concluded that the claimant was not eligible to receive unemployment insurance benefits for the six weeks ending June 28, 2014 because he was receiving or entitled to receive vacation pay which equaled or exceeded his weekly benefit amount. After due notice was issued, a telephone hearing was held on November 4, 2014. Mr. Bos participated personally. The employee participated by Ms. Erika Cox, Director of Employee Benefits, and Ms. Kathleen Sharff.

ISSUE:

At issue in this matter is whether the appeal filed herein was timely.

FINDINGS OF FACT:

The administrative law judge having considered all of the evidence in the record, finds: That a disqualification decision was mailed to the claimant's last-known address of record at 514 12th Avenue, Orion, Illinois 61723 on September 15, 2014. The decision was delivered by the US Postal Service to the claimant's last-known address of record. The decision contained a warning that an appeal must be postmarked or received by Appeals Section by September 25, 2014. The appeal was not filed until October 14, 2014 which is after the date noticed on the disqualification decision.

Mr. Bos had moved from the 514 12th Avenue, Orion, Illinois 61723 address on July 1, 2014 and relocated to 18 8th Street South, Humboldt, Iowa 50548. Mr. Bos did not change his address of record with Iowa Workforce Development or the US Postal Service. During the time between September 25, 2014 and September 30, 2014 Mr. Bos visited Orion, Illinois and at that time found the disqualification decision that had been mailed to the address that he had most recently had on file with Iowa Workforce Development. Although Mr. Bos disagreed with the decision, he did not file an appeal until 14 or more days later on October 14, 2014. Mr. Bos was researching the issue in the interim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 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 of Iowa has declared there is a mandatory duty to file appeals from representative's 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 Department of Job Service, 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 Department of Job Service, 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 administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to Agency error or action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6-2 and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The representative's decision dated September 15, 2014 (reference 02) is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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