

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EULALIA B ANSELL
Claimant

APPEAL NO: 06A-UI-10201-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/21/06 R: 03
Claimant: Appellant (2)**

Section 96.4-7 – Requiring Findings (Reemployment Services)

871 IAC 24.2-1-e – Failure to Report

871 IAC 24.6(6) – Reemployment Services

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Eulalia B. Ansell (claimant) appealed a representative's October 3, 2006 decision (reference 06) that concluded she was not qualified to receive unemployment insurance benefits for the week ending September 30, 2006 because she had not reported for reemployment services as scheduled. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on November 1, 2006. During the hearing, Exhibit A-1 was entered into evidence. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely? Is the claimant disqualified from receiving unemployment insurance benefits for the week ending September 30, 2006 due to a failure to report for reemployment services?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last-known address of record on October 3, 2006. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 13, 2006. The appeal was not dated as being received by an Agency representative until October 16, 2006, which is after the date noticed on the disqualification decision. The claimant believed that she could address the representative's decision by reporting to her local Agency office on October 13, which she did. However, the person with whom the claimant normally spoke regarding reemployment services was not in the office that day, and the other Agency representatives were uncertain as to what should be done with the claimant's appeal. The claimant completed an appeal form while at the local office on October 13 to which she attached a note to the Agency representative who dealt with reemployment services, which the claimant then left at the local office. However, the local Agency office did not treat the document as having been received that day; when the Agency representative who handled reemployment

services returned to work on October 16, it was noted as having been received that day and was forwarded to the Appeals Section.

The claimant established an initial claim for unemployment insurance benefits effective May 21, 2006. She attended orientation for reemployment services on July 12. She participated in continuing reemployment services on July 17 and August 11. She was not aware of any further scheduling of additional reemployment training or activities after August 11; there is no evidence of any written notification being provided or sent to the claimant to inform her of any additional reporting requirements, including for the week ending September 30, 2006. As a result of the hearing, the claimant acknowledges that she will return to the local Agency office and determine whether and when there are additional reemployment training or services in which she is required to participate beyond normal work search requirements.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision.

Iowa Code § 96.6-2 provides in pertinent part:

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.

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 acknowledged as filed. The Iowa 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). The record shows that the appellant did not have a reasonable opportunity to her appeal acknowledged as being filed timely.

The administrative law judge concludes that failure to have her appeal acknowledged as filed within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee, supra; Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

Turning to the substantive issue, a claimant can be found ineligible for unemployment insurance benefits for a failure to report as required.

Iowa Code § 96.4-7 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

7. The individual participates in reemployment services as directed by the department pursuant to a profiling system, established by the department, which identifies individuals who are likely to exhaust benefits and be in need of reemployment services.

871 IAC 24.2(1)e provides:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's financial institution's account or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

871 IAC 24.6 provides:

Profiling for reemployment services.

(1) The department of workforce development and the department of economic development will jointly provide a program which consists of profiling claimants and providing reemployment services.

(2) Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

(3) Reemployment services may include, but are not limited to, the following:

- a. An assessment of the claimant's aptitude, work history and interest.
- b. Employment counseling regarding reemployment approaches and plans.
- c. Job search assistance and job placement services.
- d. Labor market information.
- e. Job search workshops or job clubs and referrals to employers.
- f. Résumé preparation.
- g. Other similar services.

(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services.

- a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.
- b. Reserved.

This rule is intended to implement Iowa Code § 96.4(7).

The claimant was not sufficiently placed on notice of her need to report for additional reemployment services after August 11, 2006. Benefits are allowed for the week ending September 30, 2006.

DECISION:

The representative's October 3, 2006 decision (reference 06) is reversed. The appeal in this case was timely. The claimant is qualified to receive unemployment insurance benefits for the week ending September 30, 2006, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs