

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENIS M BOMAR
Claimant

DAVENPORT IA HOMECARE LLC
Employer

APPEAL NO. 20A-UI-13098-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a late appeal from the October 9, 2020, reference 02, decision that denied benefits effective March 29, 2020, based on the deputy's conclusion that the claimant was unduly restricting her availability for work. After due notice was issued, a hearing was held on December 21, 2020. Claimant participated and presented additional testimony through her father, Rick Moore. Dr. Betsey Morthland represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13099-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the October 9, 2020, reference 02, decision and the October 9, 2020, reference 03, decision.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 9, 2020, Iowa Workforce Development mailed two decisions to the claimant at her last-known address of record. The claimant's address of record is the family home in Davenport, where the claimant resides with her parents and her siblings. The reference 02 decision denied benefits effective March 29, 2020, based on the deputy's conclusion that the claimant was unduly restricting her availability for work. The reference 03 decision disqualified the claimant for benefits, based on the deputy's conclusion that the claimant refused recall to suitable work with Davenport Iowa Homecare, L.L.C. effective May 1, 2020.

The weight of the evidence indicates the claimant received both decisions in a timely manner, prior to the deadline for appeal. The employer's address of record is in Texas and the employer received its copy of the decisions on October 12, 2020, within three days of the October 9, 2020 mailing date. The claimant cannot recall when she received the decisions, but concedes it may have been on or before October 12, 2020.

Each decision stated that the decision would be final unless an appeal was postmarked by October 19, 2020 or received by the Appeal Section by that date. Each decision provided clear and concise instructions for filing an appeal.

The claimant is a high school graduate and a college student at Scott Community College where she studies nursing and hopes to study business. The claimant has a learning disability and enlists the assistance of others in understanding written material. The claimant enlisted her mother for assistance in filing an appeal. Though each decision contained instructions for appeal, the claimant advises that she first had to make a number of calls to determine where and how to submit the appeal. The information was on each decision. Each decision provided a customer service telephone number the claimant could call if she had questions about the decisions or needed assistance in filing an appeal. In addition, the decisions also included the Appeals Bureau telephone number the claimant could call if she had questions about the appeal procedure.

The claimant did not file an appeal by the October 19, 2020 appeal deadline. On October 22, 2020, the claimant completed and transmitted an appeal from the reference 03 decision, which the Appeals Bureau treated as an appeal from both decisions.

REASONING AND CONCLUSIONS OF LAW:

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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes 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). One 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 evidence establishes an untimely appeal. The claimant received the decision in a timely manner and had a reasonable opportunity to file an appeal. The claimant likely had a full week in which to obtain assistance and file an appeal by the October 19, 2020 deadline. The claimant deferred action on the matter and did not file an appeal until October 22, 2020, after the appeal deadline has expired. The late filing of the appeal was not attributable to Iowa Workforce Development or to the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal was untimely. The October 9, 2020, reference 02, decision that denied benefits effective March 29, 2020, based on the deputy's conclusion that the claimant was unduly restricting her availability for work, remains in effect.



James E. Timberland
Administrative Law Judge

January 6, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**