

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY J AUGUSTINE
Claimant

APPEAL NO. 134A-UI-11821-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPRINT /UNITED MANAGEMENT CO
Employer

OC: 09/01/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated October 4, 2013, reference 01, which held claimant was ineligible for unemployment insurance benefits. This case was originally set for an in person hearing in Davenport, Iowa, on January 22, 2014. The claimant brought her toddler with her to the hearing. He was running around the hearing room and making noise, which made it impossible to hold the hearing. The administrative law judge postponed the hearing and with the consent of the parties, changed the hearing to a telephone hearing. After due notice, a telephone conference hearing was scheduled for February 11, 2014. The claimant did not respond to the hearing notice. Enclosed with the file is a copy of the Clear2there hearing control screen, which shows that the claimant did not call. The employer did call in but network difficulties on their end made the call impossible. The employer could not be reached by land line because the store was not yet open. The administrative law judge left the employer a detailed voice message explaining that a decision would be issued that held that the claimant's appeal request was not timely.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

On October 4, 2013, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by October 14, 2013, or received by the Appeals Section on that date. The claimant's appeal was postmarked on October 17, 2013.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 have a reasonable opportunity to file an appeal postmarked as timely. The failure to file a timely appeal was due to the claimant's error and not due to agency error or error of the United States postal service. Since the claimant failed to file a timely appeal, the administrative law judge does not have subject matter jurisdiction to consider the merits of the claimant's claim for unemployment insurance benefits.

DECISION:

The claimant's appeal is not timely. The representative's decision dated October 4, 2013, reference 01, remains in full force and effect.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs