

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON A MILLER
Claimant

LOWE'S HOME CENTERS LLC
Employer

APPEAL 18A-UI-00865-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/09/17
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the August 8, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2018. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Eric Rutledge, Loss Prevention and Operations Support Manager. Department Exhibit D-1 (Employer appeal letter) was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents and notice of initial decision. 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.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer utilizes vendor, Thomas and Company with its unemployment insurance claims and hearings. As the employer's vendor/agent, the employer has designated unemployment insurance claims, appeals and mail be sent directly to Thomas and Company, PO Box 280100, Nashville, Tennessee, 37228.

An initial decision allowing the claimant benefits was mailed to the employer's last known address of record (at Thomas and Company) on August 8, 2017. There is no evidence that the employer/vendor did not receive the decision or that it was returned to IWD. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by

August 18, 2017. The appeal was not filed until January 19, 2018, which is after the date noticed on the unemployment insurance decision (Department Exhibit D-1).

Mr. Rutledge does not handle the unemployment insurance claims once received by Thomas and Company, nor does he determine whether an unfavorable decision is appealed. Rather, he relies upon his corporate office to notify him to attend the hearing, and produce any requested documents. He was unfamiliar of the process between Thomas and Company, and the employer, when Thomas and Company receives an unfavorable decision, in terms of who is contacted, or makes the decision of whether an appeal is filed

The appeal letter received on January 19, 2018, was signed by Holly Poulos, benefit charge auditing team lead, with Thomas and Company. Her appeal letter consisted of a one page emailed, with a one page attachment, of a letter dated on August 18, 2017 by Tylar Hammonds. Ms. Poulos did not attend the hearing to explain why she filed the employer's appeal on January 19, 2018. The administrative records reflect that in addition to the unfavorable decision at hand, the employer was also mailed its statement of charges on November 9, 2017, which reflect the employer would be liable for benefits for this claimant. It is unclear in the absence of Ms. Poulos or other representative, why the employer did not file its appeal following the receipt of the statement of charges if it intended to protest Mr. Miller's claim for benefits.

A careful review of Mr. Hammonds' appeal letter reflects that the letter was dated on August 18, 2017, which is the final day to appeal. However, the letter contained no indication that it was actually submitted to Iowa Workforce Development prior January 19, 2018; there is no email confirmation, no fax banner, no envelope reflecting a postage stamp or meter date, except for the January 19, 2018 appeal from Ms. Poulos. Mr. Hammonds did not attend the hearing to offer evidence in support of any attempted transmission of the letter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the employer's appeal is untimely.

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 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. Bd. 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 unemployment insurance 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. No evidence was presented to support the employer did not receive the initial decision, or that it was returned by the postal service. On January 19, 2018, the Appeals Bureau received the employer's appeal, which included an attached appeal letter dated August 18, 2017. (Department Exhibit D-1). Although the attached appeal letter was dated August 18, 2017, there was no indication of how or when the letter was reportedly submitted to Iowa Workforce Development within the prescribed period to appeal. Neither Mr. Hammonds nor Ms. Poulos attended the hearing to provide evidence or testimony regarding the employer's successful transmission of an appeal before January 19, 2018. Mr. Rutledge, the only witness at the hearing, had no information available about the appeal.

Further, even if the employer did attempt to submit its appeal on August 18, 2017, the employer should have been on notice shortly after November 11, 2017 that its appeal was not received by the Appeals Bureau when it received the statement of charges, which reflected this claimant had collected benefits in the prior quarter, and this employer was chargeable for those benefits. Despite the employer being mailed this statement of charges, the employer did not respond or inquire about any previously submitted appeal until almost two months later.

Based on the evidence presented, and in the absence of any witness or proof of timely submission at the hearing, the administrative law judge concludes the employer had a reasonable opportunity to file a timely appeal and failed to establish a good cause for its four month delay in filing the appeal. The undisputed evidence is the employer's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service*

pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The August 8, 2017, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn