

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA R GRAHAM
Claimant

APPEAL NO. 13A-UI-12154-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/31/13
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.2(1)(e) – Failure to Report as Directed
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Samantha Graham filed an appeal from the October 14, 2013, reference 08, decision that denied benefits for the week ending October 12, 2013 based on an agency conclusion that she had failed to report to a local Workforce Development center after notice was mailed to her and therefore did not meet the availability requirements law. After due notice was issued, a hearing was held on November 21, 2013. Ms. Graham participated. The hearing in this matter was consolidated with the hearing in appeal numbers 13A-UI-12155-JTT and 13A-UI-12156-JTT. Department Exhibits D-1, D-2, and D-3 were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant.

ISSUES:

Whether there is good cause to treat Ms. Graham's late appeal from the October 14, 2013, reference 08, decision as a timely appeal.

Whether Ms. Graham failed to report as directed during the benefit week that ended October 12, 2013.

Whether Ms. Graham met the availability requirement, or was exempted from the availability requirement, during the week that ended October 12, 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Samantha Graham established a claim for unemployment insurance benefits that was effective March 31, 2013. On October 1, 2013, Iowa Workforce Development mailed a notice to Ms. Graham at her last-known address of record. The notice indicated that Ms. Graham had been randomly selected for an audit of her work availability. The notice indicated that a telephone interview was scheduled for October 10, 2013 and that the Workforce Development representative would call Ms. Graham between 9:00 a.m. and 10:00 a.m. on that day to discuss her attendance in

Department Approved Training during the week that ended September 21, 2013. Ms. Graham did not receive the notice prior to the October 10, 2013 scheduled telephone interview and, therefore, did not participate in the interview.

On October 14, 2013, Iowa Workforce Development mailed two decisions to Ms. Graham at her last-known address of record. One of those decisions was the October 14, 2013, reference 08, decision that denied benefits for the week ending October 12, 2013. The second decision mailed to Ms. Graham on that day was the October 14, 2013, reference 09, decision that denied benefits for the week ending September 21, 2013. Each decision contained a warning that an appeal from the decision must be postmarked by October 24, 2013 or received by Iowa Workforce Development Appeals Section by that date. Ms. Graham did not receive the decisions prior to the appeal deadline. Instead, on October 25, 2013, Ms. Graham received the October 16, 2013, reference 10, decision that she was overpaid \$196.00 for the week ending September 21, 2013. The overpayment decision contained in October 26, 2013 deadline for appeal. On October 25, 2013, Ms. Graham went to the Workforce Developer center, completed an appeal form, and delivered the appeal form to the staff at the Workforce Development center area the Appeals Section received the appeal form on October 30, 2013.

Workforce Development records indicate that Ms. Graham was approved for Department Approved Training during the week that ended October 12, 2013. Ms. Graham was attending law school during that week.

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, 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.

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 871 AC 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 871 IAC 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). 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).

In the absence of evidence to demonstrate otherwise, the administrative law judge concludes that Ms. Graham did not receive the October 14, 2013, reference 08, decision prior to the October 24, 2013 deadline for appeal and, therefore, did not have a reasonable opportunity to file an appeal by that deadline. Ms. Graham filed an appeal on October 25, 2013. It appears that the Postal Service contributed to the delay in filing the appeal. For that reason, the administrative law judge concludes that there is good cause to treat the late appeal as a timely appeal. See 871 IAC 24.35(2).

Iowa Code section 96.4-3 provides:

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

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Workforce Development records indicate that Ms. Graham was approved for and was participating in Department Approved Training, attending law school, during the benefit week

that ended October 12, 2013. Accordingly, during that week, Ms. Graham was exempted from the work search requirements of Iowa Code section 96.4(3). See Iowa Code section 96.4(6).

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. 871 IAC 24.2(1)(e). The evidence indicates that the reason Ms. Graham did not participate in the October 10, 2013 telephone interview was because she had not received notice of the telephone interview. Accordingly, there would be no failure to report as directed.

Based on the above conclusions, Ms. Graham is eligible for benefits for the week ending October 12, 2013, provided she is otherwise eligible. In reaching the above conclusions, the administrative law judge has in several instances given Ms. Graham the benefit of the doubt. Ms. Graham was ill prepared for the hearing and this impacted on the reliability and credibility of her testimony. The Appeals Section provided Ms. Graham with exhibit materials for the hearing, but Ms. Graham did not bother to have those with her at the time of the hearing. Ms. Graham had received multiple decisions from the agency, some of which formed the basis for her appeal, yet Ms. Graham did not bother to have any of those documents with her for the hearing. Now that Ms. Graham has been put on notice that she is expected to appear for proceedings appropriately prepared, future adjudication of issues related to her claim should not involve the same degree of giving Ms. Graham the benefit of the doubt.

DECISION:

The Agency representative's October 14, 2013, reference 08, decision is reversed. The claimant did not fail to appear as directed during the benefit week that ended October 12, 2013. During that week, the claimant was participating in Department Approved Training and was exempted from the work search aspect of the availability requirement. The claimant was eligible for benefits for the week ending October 12, 2013, provided she was otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css