

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN D ROBERTS
Claimant

APPEAL NO. 10A-UI-02677-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GL SOUTHTOWN LLC
Employer

**Original Claim: 12/27/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 21, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 30, 2010. The claimant did respond to the hearing notice and provided a telephone number at which he was to be available. When the administrative law judge called that number, voice mail picked up. The time was 8.32 a.m. The claimant was informed that the record would be left open until 8:40 a.m. and detailed instructions were provided on how to participate in the hearing. The claimant did not call and the record was closed at 8:54 a.m. The dispositive issue in this case is the timeliness of the claimant's appeal. The record in this case consists of the agency records

ISSUE:

Whether the claimant's appeal was timely.

FINDINGS OF FACT:

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

A representative's decision was issued on January 21, 2010, holding that the claimant was not eligible for unemployment insurance benefits. The decision also stated that it would become final unless an appeal was postmarked by January 31, 2010, or received by Iowa Workforce Development Appeals Section by that date. January 31, 2010, fell on a Sunday, and therefore the date was extended to February 1, 2010. The claimant's appeal was taken by telephone on February 16, 2010, and marked as received by the Appeals Section on February 19, 2010.

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 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 administrative law judge concludes that the appellant's failure to have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The claimant never attempted to utilize the postal service. Rather, it appears he called a local Workforce center to file an appeal on February 16, 2010. This phone appeal was then forwarded to the Appeals Section. Since the local Workforce center is an agent for purposes of receiving appeals, the claimant's appeal can be considered filed on February 16, 2010. However, this is still beyond the ten-day deadline of February 1, 2010. The claimant did not participate in the hearing and the reasons for the delay are unknown.

Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claimant's claim for unemployment insurance benefits.

DECISION:

The representative's decision dated January 21, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw