

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DORIS A ALMENDAREZ

Claimant

APPEAL NO. 16A-UI-05384-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 03/13/16

Claimant: Appellant (1)

Iowa Code Section 96.5(3) – Work Refusal
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Dorie Almendarez filed an appeal from the April 12, 2016, reference 01, decision that disqualified her for benefits, based on an Agency conclusion that she had refused an offer of suitable work from Advances Services, Inc. on March 17, 2016. After due notice was issued, a hearing was held on May 26, 2016. Ms. Almendarez participated and presented additional testimony through Rolando Almendarez. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 16A-UI-05385-JTT. The administrative law judge received Exhibit A and Department Exhibits D-1 and D-2 into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO. Spanish-English interpreter Alexis Cebeda of CTS Language Link assisted with the hearing.

ISSUES:

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 April 12, 2016, Iowa Workforce Development mailed a copy of the April 12, 2016, reference 01, decision to Doris Almendarez's last-known address of record. The decision disqualified Ms. Almendarez for benefits based on an Agency conclusion that she had refused an offer of suitable work from Advances Services, Inc. on March 17, 2016. Ms. Almendarez received the decision on or about April 16, 2016. Ms. Almendarez is a native Spanish speaker but has some ability to understand English. The decision stated that an appeal from the decision must be postmarked by April 22, 2016 or be received by Iowa Workforce Development Appeal Section by that date. The decision contained a customer service phone number that Ms. Almendarez could use if she had any questions about the decision. The backside of the reference 01 decision contained information in English and Spanish. That information explained

that the decision was a denial of benefits, set forth appeal rights, and provided the steps necessary to file an appeal. The backside of the decision also contained a telephone number for the Appeals Bureau that Ms. Almendarez could use to contact the appeals Bureau with any questions regarding the decision or the appeal process.

On April 14, 2016, Iowa Workforce Development mailed a copy of the April 14, 2016, reference 02, decision to Ms. Almendarez at her last-known address of record. The reference 02 decision held that Ms. Almendarez was overpaid \$477.00 in unemployment insurance benefits for three weeks between March 13, 2016 and April 2, 2016, based on the earlier decision that disqualified her for benefits in connection with the purported work refusal. Ms. Almendarez received the overpayment decision on or about March 17, 2016. The decision stated that an appeal from the decision must be postmarked by April 24, 2016 or be received by Iowa Workforce Development Appeal Section by that date. The decision contained a customer service phone number that Ms. Almendarez could use if she had any questions about the decision. The backside of the reference 02 decision contained information in English and Spanish. That information explained that the decision set forth appeal rights and provided the steps necessary to file an appeal. The backside of the decision also contained the telephone number for the Appeals Bureau that Ms. Almendarez could use to contact the Appeals Bureau with any questions regarding the decision or the appeal process.

Ms. Almendarez's husband is fluent in English, and was available to assist her at all relevant times with reading and understanding the decisions.

Ms. Almendarez did not file an appeal on April 20, 2016.

On May 12, 2016, Mr. and Mrs. Almendarez went to the Spencer Workforce Development Center and spoke to an Agency representative. On that same day, Ms. Almendarez accessed the Workforce Development website and submitted an appeal of the reference 01 decision through the website. The Appeals Bureau received the appeal that same day and treated the appeal as an appeal from both decisions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

Ms. Almendarez's appeal was filed on May 12, 2016, when Workforce Development received the online appeal.

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).

The record shows that Ms. Almendarez did have a reasonable opportunity to file a timely appeal from both decisions, but failed to do so. The weight of the evidence in the record establishes that Ms. Almendarez received the decisions in a timely manner, had immediate access to assistance in understanding and responding to the decisions, but delayed filing an appeal until May 12, 2016. The delay in filing the appeal was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is no good cause to treat the appeal as a timely appeal. See 871 IAC 24.35(2). Because the appeal was untimely, administrative law judge lacks jurisdiction to disturb the lower 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 April 12, 2016, reference 01, decision is affirmed. The claimant's appeal was untimely. The decision, that disqualified the claimant for benefits based on an Agency conclusion that she had refused an offer of suitable work from Advances Services, Inc. on March 17, 2016, remains in effect. Effective March 17, 2016, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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