

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRI L DUPRE
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL 18A-UI-08536-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/10/18
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 11, 2018, (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because claimant failed to participate in reemployment services. The parties were properly notified of the hearing. A telephone hearing was held on August 30, 2018. The claimant, Terri Dupre, participated personally. Larry Faber, Workforce Advisor, participated on behalf of Iowa Workforce Development. Department Exhibit D-1 was admitted into the record. Official notice was taken of agency records.

ISSUES:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed a claim for unemployment insurance benefits with an effective date of June 10, 2018. Claimant was selected to participate in the reemployment services program. A notice was mailed to the claimant on June 28, 2018 which stated the claimant was to report for a reemployment and eligibility assessment appointment on July 10, 2018. The claimant did not receive the notice. A decision was mailed to the claimant on July 11, 2018 notifying her that her benefits would cease until she completed her reemployment and eligibility assessment. The claimant did not receive that decision in the mail. The claimant noticed that no money was put on her card for the two week period ending July 22, 2018. She contacted the agency and at that time learned that she had missed a reemployment services appointment. The claimant was rescheduled to attend her appointment July 25 at the Mason City office. As Mr. Faber was out of the office, Elmarie Schilling, a workforce advisor from the Dubuque office, met with the claimant via teleconference and helped the claimant complete the first step of her required courses. Ms. Schilling then unlocked the claimant's claim and she began receiving benefits. During the teleconference meeting with Ms. Schilling, the claimant specifically discussed the decision that had denied her benefits with Ms. Schilling. She did not ask for a copy of the

decision nor did she indicate she wanted to file an appeal. The claimant could have filed the appeal that day from the Mason City office, even without a copy of the appeal.

The claimant then waited until August 2, to contact the customer service line for a copy of the decision. She did not file her appeal until August 10, well over ten days after she had actual knowledge that a decision existed on July 25, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant'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. 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 claimant had actual knowledge that a denial decision existed on July 25, 2018, while she was in the Mason City local office. She could have filed her appeal on that date. She chose not to do so. She did not even contact the customer service line until August 2. The administrative

law judge considered July 25 as the date the claimant's decision was known to her. Giving her ten days after that date to file an appeal would give her until Sunday August 5 to file an appeal. Because the due date fell on a Sunday her deadline would be extended until August 6. Claimant did not put her appeal in the mail until August 10, 2018.

The record in this case shows that more than ten calendar days elapsed between the date the claimant had actual notice of the appeal 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 the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that 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 871 IAC 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. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The July 11, 2018, (reference 01), decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs