

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA L HILL
Claimant

APPEAL NO. 17A-UI-08476-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRE MOUNTAIN RESTAURANTS LLC
Employer

OC: 04/23/17
Claimant: Respondent (1)

Iowa Code Section 96.3(5) – Business Closing
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the August 1, 2017, reference 06, decision that held the claimant's benefit eligibility would be redetermined, based on the claims deputy's conclusion that the claimant was laid off pursuant to a business closing. After due notice was issued, a hearing was commenced on September 6, 2017 and concluded on September 7, 2017. Claimant Lisa Hill participated. Karla Rosa represented the employer and presented additional testimony through George Rodarte. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-08475-JTT. Exhibit 1 and Department Exhibits D-1, D-2 and D-3 were received into evidence.

ISSUE:

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 August 1, 2017, Iowa Workforce Development mailed a copy of the August 1, 2017, referenced 06, decision to the employer last-known address of record. The reference 06 decision stated that an appeal from the decision must be postmarked by August 11, 2017 or be received by the Appeals Bureau by that date. The employer's address of record on file with Iowa Workforce Development is care of Tiffany Heap at 120 Chula Vis, Hollywood Park, Texas 78232. The address of record contains a minor error in that street name, Chula Vis, is actually Chula Vista. The reference 06 decision stated that an appeal from the decision must be postmarked by August 11, 2017 or be received by the Appeals Bureau by that date. Despite the minor error in the address, the employer received the decision in a timely manner, prior to the deadline for appeal. The employer did not file an appeal by the appeal deadline. Karla Rosa, Human Resources Generalist, prepared an appeal that she dated August 11, 2017. However, the employer did not transmit the appeal until August 18, 2017, when the employer faxed an appeal of the August 1, 2017, reference 06, decision to the Appeals Bureau.

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, 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-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 of the August 1, 2017, reference 06, decision and the employer's August 18, 2017 appeal. 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 Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb the August 1, 2017, reference 06, decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). The August 1, 2017, reference 06, decision remains in effect.

DECISION:

The August 1, 2017, reference 06, decision is affirmed. The employer's appeal from the decision was untimely. The decision that held the claimant's benefit eligibility would be redetermined, based on the claims deputy's conclusion that the claimant was laid off pursuant to a business closing, remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs