IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SONJA A SCHWENKER
Claimant

GREAT RIVER MEDICAL CENTER
Employer

APPEAL NO. 14A-UI-02850-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/26/14
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Sonja Schwenker filed an appeal from the February 19, 2014, reference 02, decision that disqualified her for benefits based on an agency conclusion that she had voluntarily quit on January 20, 2014 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 7, 2014. Ms. Schwenker participated. Christy Ford represented the employer and presented additional testimony through Jo Greiner and Darcy Adams. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-03689-JTT concerning the claimant's appeal from the February 19, 2014, reference 04, disqualification decision. The parties waived formal notice in connection with Appeal Number 14A-UI-03689-JTT.

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 February 19, 2014, Iowa Workforce Development mailed a copy of the February 19, 2014, reference 02, decision to Sonja Schwenker's last-known address of record. That decision disqualified Ms. Schwenker for unemployment insurance benefits in connection with a January 20, 2014 separation from employer Great River Medical Center. The decision contained a warning that an appeal from the decision must be postmarked by March 1, 2014 or received by the Appeals Section by that date. The decision also indicated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 1, 2014, was a Saturday and the next working day was Monday, March 3, 2014.

Also on February 19, 2014, Iowa Workforce Development mailed a copy of the February 19, 2014, reference 04, decision to Sonja Schwenker's last-known address of record. That decision disqualified Ms. Schwenker for unemployment insurance benefits in connection with a January 20, 2014 separation from employer Riverview Systems, Ltd. That decision also

contained a warning that an appeal from the decision must be postmarked by March 1, 2014 or received by the Appeals Section by that date. The decision also indicated that if the deadline for appeal fell on a Saturday, Sunday or legal holiday, the deadline would be extended to the next working day. March 1, 2014, was a Saturday and the next working day was Monday, March 3, 2014.

Ms. Schwenker received both decisions on or about February 21, 2014. On that day, Ms. Schwenker spoke with a Workforce Development representative and had a decision about department approved training. Ms. Schwenker concluded from her conversation with the Workforce Development representative that she need not file an appeal from the two disqualification decisions she had received. The Workforce Development representative did not tell Ms. Schwenker not to file an appeal from those decisions. Ms. Schwenker subsequently spoke to another Workforce Development representative via email. That conversation, too, was about department approved training. On Monday, March 3, 2014, Ms. Schwenker received an email message from a Workforce Development representative indicating that she could not be approved for department approved training because she had been disqualified for benefits and that she needed to file an appeal from the disqualification decisions. Ms. Schwenker did not immediately heed that advice, even though March 3, 2014 was the actual deadline for filing an appeal from the two February 19, 2014 disqualification decisions. On March 12, 2014, Ms. Schwenker wrote her appeal from both February 19, 2014 decisions and faxed her appeal to the Appeals Section. The Appeals Section received the appeals the same day.

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).

Ms. Schwenker's appeal from both February 19, 2014 decisions was filed on March 12, 2014, when the Appeals Section received her faxed 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 the appellant did have a reasonable opportunity to file a timely appeal. Ms. Schwenker has received both decisions on February 21, 2014. Each decision clearly indicated it disqualified Ms. Schwenker for unemployment insurance benefits and clearly indicated that Ms. Schwenker needed to file an appeal from the decision. The administrative law judge finds the claimant's assertion that a representative of Workforce Development told her not to file an appeal from the disqualification decisions highly improbable and not credible. The weight of the evidence indicates that the claimant was calling about department approved training, not about the disqualification decisions she had received. The claimant may have misunderstood or misinterpreted the guidance given to her on the department approved training issue, but the administrative law judge concludes that the Workforce Development representative with whom Ms. Schwenker initially spoke would not and did not tell her to refrain from filing an appeal from an adverse decision. If Ms. Schwenker had any question about whether she needed to file an appeal from the decisions, that question was answered with stark clarity on March 3, 2014, when she received the email that clearly stated she needed to file an appeal. At that point, Ms. Schwenker still had until 11:59 p.m. on March 3, 2014 to file a timely appeal from the decisions. Ms. Schwenker did not take immediate action to file a timely appeal. Instead, she set the matter aside for nine days and then came back to it on March 12, 2014.

No appeal shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See 871 IAC 24.35(2)(c).

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 Workforce Development or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Even if the administrative law judge had been persuaded that Workforce Development somehow contributed to the delay that occurred in the days before the extended March 3, 2014 appeal deadline, and the administrative law judge is not persuaded that was the case, Workforce Development in no manner contributed to the unreasonable delay that occurred on or after March 3, 2014.

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 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 claims deputy's February 19, 2014, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision that disqualified the claimant for benefits remains in effect.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs