

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA WEBSTER
Claimant

APPEAL NO. 14A-UI-12729-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ARCHITECTS SCHIPPER KASTNER PC
ASK STUDIO**
Employer

**OC: 09/07/14
Claimant: Appellant (1)**

Iowa Code Section 96.5(7) – Vacation Pay
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Linda Webster filed an appeal from the October 14, 2014, reference 01, decision that denied benefits for the five-week period ending October 18, 2014, based on an Agency conclusion that she had received vacation pay that was deductible from her unemployment insurance benefits for those five weeks and that the vacation pay equaled or exceeded her weekly benefit amount. After due notice was issued, a hearing was held on January 7 2015. Ms. Webster participated. Brent Schipper represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 14A-UI-12730-JTT and 14A-UI-12731-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 13, 14 and 16 were received into evidence on the timeliness of appeal issue.

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 October 14, 2014, Iowa Workforce Development mailed two decisions to Linda Webster at her last-known address of record. The reference 01 decision denied benefits for the five-week period ending October 18, 2014, based on an Agency conclusion that Ms. Webster had received vacation pay that was deductible from her unemployment insurance benefits for those five weeks and that the vacation pay equaled or exceeded her weekly benefit amount. The reference 02 decision denied benefits for the two-week period ending November 1, 2014, based on an Agency conclusion that Ms. Webster had received severance pay that was deductible from her unemployment insurance benefits for those two weeks and that the severance pay equaled or exceeded her weekly benefit amount. Both decisions contained the same warning that an appeal from the decision must be postmarked by October 24, 2014 or be received by the Appeals Section by that date. Ms. Webster received both decisions on October 15, 2014, but elected not to file an appeal from either decision by the October 24, 2014 deadline.

On December 1, 2014, Iowa Workforce Development mailed a copy of the December 1, 2014, reference 03, overpayment decision to Ms. Webster's last-known address of record. That decision said Ms. Webster had been overpaid \$90.00 in benefits for the week ending November 8, 2014 based on her receipt of *vacation* pay for that week. The overpayment decision carried a December 11, 2014 deadline for appeal. On December 11, 2014, Ms. Webster drafted and faxed her appeal to the Appeals Section, which received the appeal the same day.

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. Webster's appeal was filed on December 11, 2014.

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 from the reference 01 decision and the reference 02 decision, but elected not to file an appeal from either decision by the deadline for appeal.

Ms. Webster's 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. See 871 IAC 24.35(2). Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), and the administrative law judge lacks jurisdiction to disturb the reference 01 or the reference 02 decision. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The October 14, 2014, reference 01, decision is affirmed. The appeal in this case was not timely. The claims deputy's decision remains in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs