

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COLBY J YODER
Claimant

APPEAL NO. 21A-UI-25362-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GILBERTVILLE – DON BOSCO
Employer

OC: 03/29/20
Claimant: Appellant (1R)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(5) - Between Academic Terms Disqualification

STATEMENT OF THE CASE:

The claimant, Colby Yoder, filed a late appeal from the January 15, 2021, reference 02, decision that allowed benefits to the claimant, provided he was otherwise eligible, based on the non-school wages, but that held the school system would not be charged for benefits paid for weeks between successive academic years or terms. The decision stated that the claimant was laid off and asserted the layoff was between academic years or terms. The decision asserted the claimant had reasonable assurance of employment in the next academic term. The decision stated that the wages earned from the school system employment for the period of October 1, 2018 through March 29, 2020 would be removed from the claim. After due notice was issued, a hearing was held on January 13, 2022. The claimant participated. Paul Jahnke represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-25364-JTT. Exhibit A was receive into evidenced. The administrative law judge took official notice of the following Agency administrative records: the reference 02 and 03 decision, the monetary determination and corrected monetary determination, DBRO, and the reference 02 fact-finding materials.

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:

The claimant established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$591.00. The claimant made weekly claims for each of the nine weeks between March 29, 2020 and May 30, 2020 and received \$591.00 in regular benefits for each of those weeks. The claimant then discontinued his claim for benefits. Throughout the nine weeks when the claim for benefits was active, the claimant continued to be physically and mentally able to work and continue to be available to report for work.

The claimant established his claim for benefits in response to being temporarily laid off from his primary employment with Covenant Medical Center (employer account number 104181).

At the time the claimant established he claim for benefits, he was also temporarily laid off from part-time supplemental employment with Gilbertville – Don Bosco Catholic school system. The claimant had worked for the school system since 2010 as a coach. The claimant multiple sports including track and softball. The track season would usually start in April and end in early June, shortly after the end of the academic year. The softball season would start in May, would overlap somewhat with the track season, and would conclude in July. In 2020, the school system cancelled the track season in response to the Governor's directive to close schools to in-person activities to slow community spread of the COVID-19 virus. At the time, the track season was cancelled, the claimant was uncertain when the school system would next have coaching work for him. In mid-May 2020, the claimant received word that the district would go forward with the softball season. The 2019-2020 academic year ended May 22, 2020. The softball season started in June 2020. The claimant returned to work for the school system in June 2020 with the start of the softball season.

On June 23, 2020, the school system's agent challenged liability on the unemployment insurance claim for the period beyond the May 22, 2020 end of the 2019-2020 academic year. The school system asserted the claimant had reasonable assurance as of April 13, 2020 that he would receive similar employment with the school system for the next academic year or term.

On December 11, 2020, an Iowa Workforce Development Benefits Bureau deputy contacted the claimant as part of a cold-call fact-finding interview. The deputy told the claimant to expect a decision in the mail.

On January 15, 2021, Iowa Workforce Development mailed a reference 02 decision to the claimant's last-known address of record. The address of record was a United States Postal Service post office box in Gilbertville, Iowa. The reference 02 decision allowed benefits to the claimant, provided he was otherwise eligible, based on the non-school wages, but held the school system would not be charged for benefits paid for weeks between successive academic years or terms. The decision stated that the claimant was laid off and asserted the layoff was between academic years or terms. The decision asserted the claimant had reasonable assurance of employment in the next academic term. The decision stated that the wages earned from the school system employment for the period of October 1, 2018 through March 29, 2020 would be removed from the claim. The reference 02 decision stated that the decision would become final unless an appeal was postmarked by January 25, 2021 or was received by the Appeal Section by date. The reference 01 decision was delivered to the address of record in a timely manner, prior to the deadline for appeal. The claimant took no steps to file an appeal from the decision by the January 25, 2021 appeal deadline or at any point before November 15, 2021.

On January 15, 2021, Iowa Workforce Development mailed a corrected monetary record (green paper) to the claimant that reflected removal of the school based wages from the claim and that reduced the weekly benefit amount to \$474.00 and that reduced the maximum benefit amount. The monetary determination included a 10-day day deadline to appeal the determination. The monetary determination was delivered to the address of record in a timely manner, prior to the deadline for appeal. The claimant did not take steps to challenge the monetary determination by the January 25, 2021 deadline for appeal.

On October 22, 2021, Iowa Workforce Development mailed a reference 03 overpayment decision to the claimant's last-known address of record. The reference 03 decision held the

claimant was overpaid \$1,053.00 in benefits for nine weeks between March 29, 2020 and May 30, 2020, based on the January 15, 2021 redetermination that reduced the weekly benefit amount and the maximum benefit amount. The reference 03 decision stated that the decision would become final unless an appeal was postmarked by November 1, 2021 or was received by the Appeals Section by that date. The reference 03 decision was delivered to the address of record in a timely manner, prior to the deadline for appeal. The claimant did not take steps to file the appeal by the November 1, 2021 deadline. Instead the claimant waited until November 15, 2021 and on that day completed and transmitted an online appeal. The Appeals Bureau received the appeal on November 15, 2021 and treated it as also a late appeal from the reference 01 decision.

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 Iowa Administrative Code rule 871-24.35(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 Iowa Administrative Code rule 871-24.35(1)(b).

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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The claimant's appeal from the January 15, 2021, reference 02, decision the removed the school-based wages from the claim was untimely. The decision was delivered to the claimant's address of record in a timely manner. The claimant had a reasonable opportunity to file an appeal by the January 15, 2021 deadline. The claimant unreasonably delayed filing the appeal until November 15, 2021. The late filing was attributable to the claimant's inaction on the matter and was not attributable to Iowa Workforce Development error or misinformation or to delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the decision from which the claimant appeals in this matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the January 15, 2021, reference 02, decision that removed the school-based wages is untimely. The reference 02 decision remains in effect.

This matter is **remanded** to the Benefits Bureau for consideration of whether the removal of the school wages was in all respects accurate and for further action the Benefits Bureau deems appropriate, if any.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

February 11, 2022
Decision Dated and Mailed

jet/mh