

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VANDROSS H MUKUNA MBUYI
Claimant

APPEAL NO. 21A-UI-17890-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC
Employer

OC: 04/26/20
Claimant: Appellant (1R)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 30, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 6, 2021. The claimant did participate. Claimant's exhibit A was admitted to the record. Employer failed to respond to the hearing notice and did not participate. Interpretive services were provided CTS Language Link

ISSUES:

Whether the appeal is timely?
Whether claimant is able and available for work?
Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on July 30, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 9, 2020. The appeal was not filed until August 13, 2021, which is after the date noticed on the disqualification decision. Claimant stated that he did receive the decision. He then stated that he did not receive the decision, but received a call from IWD stating he could not receive benefits. Claimant did not appeal this decision handed down on July 30, 2020 nor the decision in the companion case (ref 03) until August 13, 2021.

Claimant also filed for benefits based on a separation from his employment with the above-referenced employer. Claimant was granted benefits based on this separation. The separation occurred in November of 2020.

Claimant has additionally been granted PUA benefits since July 25, 2020. Claimant was not granted benefits prior to this time as he'd previously been eligible for regular benefits. He is not currently eligible for regular benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows 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.

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 Iowa Admin. Code r. 871-24.35(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 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).

This matter will be remanded for a redetermination of the time period in which claimant is eligible for PUA benefits in light of the denial of regular unemployment benefits.

DECISION:

The July 30, 2020, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

This matter will be remanded back to the fact finders for a redetermination of when claimant is eligible to receive PUA benefits in light of his ineligibility for regular state benefits as of April 26, 2020.



Blair A. Bennett
Administrative Law Judge

October 8, 2021
Decision Dated and Mailed

bab/mh

Note to Claimant: This matter is being remanded to the fact finder for redetermination of the date of eligibility of PUA benefits. As claimant was previously determined eligible for PUA benefits for dates after he was found ineligible for regular benefits, it may be necessary for claimant to reapply for PUA benefits for the earlier dates.

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.