

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHAWNEE M TURNER

Claimant

APPEAL 20A-UI-05399-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA SCHOOL FOR THE DEAF

Employer

OC: 03/15/20

Claimant: Respondent (6-R)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.7(2)a(2) – Employer Chargeability
Iowa Code § 96.4(5) – Reasonable Assurance
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On June 8, 2020, Iowa School for the Deaf (employer/appellant) filed an appeal from the unemployment insurance decision dated May 22, 2020, reference 01, which allowed benefits based on the determination Shawnee M. Turner (claimant) was on a short-term layoff. A hearing was held on July 23, 2020 and consolidated with the hearings for appeals 20A-UI-05390-SC-T and six others. The claimant did not respond to the hearing notice and did not participate. The employer participated through Deb LeHeup, Director of Human Resources. The employer's Exhibit 1 and the department's Exhibits D1 and D2 were admitted into the record.

ISSUE:

Is the employer's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 22, 2020, Iowa Workforce Development (agency) mailed the decision allowing the claimant to receive benefits to the employer's last known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by June 1.

The employer's facility had been closed since mid-March. The employer received the decision within a week of the date it was mailed. However, Deb LeHeup, Director of Human Resources, only checks the mail once a week.

Around the same time, LeHeup contacted the agency to report an issue of reasonable assurance for some of the employees who were claiming benefits. She was given instructions

on how to report the issue to the Benefits Bureau of IWD. However, when she followed those instructions, the form she was advised to fill out did not seem appropriate. On June 8, LeHeup elected to submit an appeal, instead of filling out the form as instructed.

The issues of whether the claimant has reasonable assurance of employment in the following school year and whether she is eligible for benefits between academic years or terms has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is untimely.

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

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action

of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 employer filed the appeal after the deadline, and it has not established that the failure to file a timely appeal was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

The newly raised issues whether the claimant has reasonable assurance of employment in the following school year and whether she is eligible for benefits between academic years or terms is remanded to the Benefits Bureau for a fact-finding interview to include both parties and a decision with appeal rights sent to both parties..

DECISION:

The appeal of the May 22, 2020, reference 01, unemployment insurance decision is dismissed, as it was not timely filed. The unemployment insurance decision remains in effect.

REMAND:

The issues of whether the claimant has reasonable assurance of employment in the following school year and whether she is eligible for benefits between academic years or terms is remanded to the Benefits Bureau for a fact-finding interview to include both parties and a decision with appeal rights sent to both parties.

A handwritten signature in dark ink, reading "Stephanie R Callahan" with a long, sweeping horizontal line extending to the right.

Stephanie R. Callahan
Administrative Law Judge

August 3, 2020
Decision Dated and Mailed

src/sam