

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRIS L CONLAN
Claimant

APPEAL 17A-UI-02871-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 11/20/16
Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Notice to Report
Iowa Admin. Code r. 871-24.23(11) – Failure to Report
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 7, 2017, (reference 04) unemployment insurance decision that denied benefits because of a failure to report as directed. After due notice was issued, a hearing was held by telephone conference call on April 6, 2017. Claimant participated. Claimant exhibit A was admitted into evidence with no objection. Official notice was taken of the administrative record of claimant's continued claims history and benefit payment history, with no objection.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An ineligibility unemployment insurance decision was mailed to claimant's last known address of record on February 7, 2017. Claimant received the decision around February 8, 2017. Claimant Exhibit A. Claimant has been at the address of record since approximately September 2016. Claimant testified it takes approximately three days to receive mail at the address of record from Des Moines, Iowa. Claimant read the decision when he received it. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 17, 2017. The appeal was not filed until March 13, 2017, which is after the date noticed on the unemployment insurance decision.

When claimant had opened his claim for benefits, he told an employee at the Dubuque local office that his field was more of a specialty position (IT Systems Engineer) and he asked what jobs he should be applying for if there is not anything available in his field. The employee at the Dubuque local office told him to just apply for jobs in his field of work. Claimant understood this to mean that if there were not two job openings in his field, he did not have to make two job contacts every week.

On January 25, 2017, claimant received an Unemployment Insurance Letter of Inquiry, dated January 23, 2017. Claimant Exhibit A. Claimant was instructed to respond by February 1, 2017. After claimant received the letter, he contacted Iowa Workforce Development (IWD) in Des Moines, Iowa on February 6, 2017. Claimant Exhibit A. Claimant testified he delayed contacting IWD because he forgot about the letter. During the phone call with IWD on February 6, 2017, he was told he had received some misinformation from the IWD local office in Dubuque, Iowa when he opened his claim for benefits. Claimant Exhibit A. On February 6, 2017, the IWD employee in Des Moines told claimant that this advice was inaccurate and that he had to apply for anything that was within 75% of what he was making before. Two days later (February 8, 2017), claimant received the unemployment insurance decision dated February 7, 2017 (reference 04) that denied him benefits as of January 29, 2017. Claimant was "confused as to what was going on." Claimant Exhibit A. Claimant never returned the Unemployment Insurance Letter of Inquiry that was mailed on January 23, 2017.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 unemployment insurance 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. Although claimant may have been confused as to what was going on, he received the decision denying him benefits within the appeal period, but he did not appeal the decision for over a month. The administrative law judge concludes that failure to follow the clear written instructions 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 § 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. 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).

DECISION:

The February 7, 2017, (reference 04) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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