

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SKYLER I CHRISTENSEN

Claimant

APPEAL 20A-UI-11057-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTIN LUTHER HOME CORPORATION

Employer

OC: 05/03/20

Claimant: Respondent (1)

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 § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability
Iowa Code § 96.3(7) – Overpayment of Benefits
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On September 10, 2020, Martin Luther Home Corporation (employer) filed an appeal from the August 5, 2020, reference 02, unemployment insurance decision that allowed benefits effective May 3, 2020, based upon the determination that Skyler I. Christensen was partially unemployed and able to and available for work. After due notice was issued, a telephone hearing was held on October 28, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Jennifer Groenwold from Equifax. Janet Warren, Executive Director, and Ashley Cole, HR Coordinator, were sworn in as employer witnesses, but they did not testify. 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: The claimant filed her claim for benefits effective May 3, 2020. The employer uses an agent to process its unemployment insurance claims. On August 5, Iowa Workforce Development mailed an allowance decision to the employer's agent. The agent received the decision in their mailroom within ten days on August 10. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 15. The appeal was not filed until September 10, which is after the date noticed on the decision, because that was when the decision was sent from the mailroom to the employee who responds to IWD on behalf of the employer.

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's agent received the decision prior to the appeal deadline but did not submit the appeal for four weeks. The employer made a business decision to use an agent to process their unemployment insurance claims and the agent's delay in submitting the appeal on behalf of the employer was due to their internal process being overwhelmed. They have 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).

DECISION:

The August 5, 2020, reference 02, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Stephanie R. Callahan
Administrative Law Judge

November 2, 2020
Decision Dated and Mailed

src/scn