

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DEBORAH M OVERTON
Claimant

APPEAL NO. 11A-UI-10153-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/19/10
Claimant: Appellant (1)

Section 96.4-4 – Qualification in a New Benefit Year
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Deborah Overton (claimant) appealed a representative's July 8, 2011 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she had not received wages of at least \$250.00 during or after her previous benefit year. After hearing notices were mailed to the claimant's last-known addresses of record, a telephone hearing was held on August 25, 2011. The claimant participated personally.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant received wages of at least \$250.00 during or after her previous benefit year.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective September 20, 2009 after her employment with Group Dekko ended in September 2009. The claimant exhausted the maximum benefit amount on the claim filed effective September 20, 2009. The claimant subsequently filed a claim for unemployment insurance benefits effective September 19, 2010. The claimant has not been paid wages of at least \$250.00 during or after her previous benefit year.

A decision was mailed to the claimant's address of record on July 8, 2011. The claimant did not receive the decision. She took the decision to the Osceola Workforce Office. After asking for help, an employee told the claimant not to worry about the decision. The claimant filed an appeal on August 2, 2011, after another Workforce employee told her she should have filed an appeal.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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. Board 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. 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 not 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 due to Agency error pursuant to 871 IAC 24.35(2). The appeal shall be accepted as timely.

For the reasons that follow the administrative law judge concludes the claimant has not satisfied the conditions for eligibility in a new benefit year.

Iowa Code § 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

The statute requires that a claimant work in and be paid wages for insured work since the beginning of the previous benefit year in order to be eligible for benefits in a subsequent benefit year. The intent of the statute is to prevent a claimant from drawing benefits in two benefit years based on the same employment and separation from employment and require some new work and wages before receiving benefits in a second benefit year.

The record establishes that the claimant has not worked in or been paid wages for insured work of at least \$250.00 either during or after the previous benefit year. Therefore, it is the conclusion of the administrative law judge that the claimant has not met the provisions of Iowa Code § 96.4-4 and benefits were properly denied.

DECISION:

The representative's July 8, 2011 decision (reference 02) is affirmed. The claimant's appeal is timely. The claimant is not eligible to receive unemployment insurance benefits until she has earned at least \$250.00 in insured work and meets all other eligibility requirements of the unemployment insurance law.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs