

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTINA J ELDRIDGE
Claimant

TRADITIONS CHILDRENS CENTER IV INC
Employer

APPEAL NO. 21A-UI-03457-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Christina Eldridge, filed a late appeal from the July 9, 2020, reference 01, decision that denied benefits for the period beginning April 5 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on March 24, 2021. The claimant participated. Nicole Zahn represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Numbers 21A-UI-03458-JT-T and 21A-UI-03459-JT-T. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the July 9, 2020, reference 01, and October 9, 2020, reference 02, decisions. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claimant (KCCO) and of the benefits disbursed to the claimant (DBRO).

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 9, 2020, Iowa Workforce Development mailed the July 9, 2020, reference 01, decision to the claimant's West Des Moines last-known address of record. The decision denied benefits for the period beginning April 5 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. The decision stated that it would become final unless an appeal was postmarked by July 19, 2020 or was received by the Appeal Section by that date. The decision also stated that if the appeal deadline fell on a Saturday, Sunday, or legal holiday, the deadline would be extended to the next working day. July 19, 2020 was a Sunday and the next working day was Monday, July 20, 2020. The claimant received the decision in a timely manner, did not read it, and did not take steps to file an appeal by the July 20, 2020, extended deadline for appeal.

On October 9, 2020, Iowa Workforce Development mailed the October 9, 2020, reference 02, decision to the claimant's West Des Moines last-known address of record. The decision denied benefits for the period beginning July 5 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. The decision stated that it would become final unless an appeal was postmarked by October 19, 2020 or was received by the Appeal Section by that date. The claimant received the decision in a timely manner, but did not take steps to file an appeal by the October 19, 2020 deadline for appeal.

On January 5, 2021, Iowa Workforce Development mailed the January 5, 2021, reference 03, decision to the claimant's West Des Moines last-known address of record. The decision held that the claimant was overpaid \$318.00 in regular unemployment insurance benefits for the week of April 5-11, 2020, based on an earlier decision that disqualified the claimant for benefits based on an able and available determination. The reference 03 decision erroneously included January 4, 2021 and the date of the earlier decision. The correct date was July 9, 2020. The reference 03 decision stated that it would become final unless an appeal was postmarked by January 15, 2021 or was received by the Appeal Section by that date. The claimant received the reference 03 decision on January 7, 2021, drafted an appeal on January 10, 2021, and mailed the appeal on or about January 13, 2021. The claimant erroneously directed the appeal to a post office box used for receipt of employer protest information. The Unemployment Insurance Service Center (UISC) received the appeal on January 15, 2021, did not preserve the envelope or note the post mark, and forwarded the appeal to the Appeals Bureau. The Appeals Bureau received the appeal on January 22, 2021 and treated as an appeal also from the reference 01 and 02 decisions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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, subsections 10 and 11, 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

Because the appeal was mailed, and because the Unemployment Insurance Service Center did not preserve the postmarked envelope, the appeal is deemed filed on January 10, 2021, the drafting date that appears on the appeal.

The evidence in the record establishes 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 evidence in the record establishes an untimely appeal from the July 9, 2020, reference 01, decision. The claimant received the decision in a timely manner, but did not take steps to file an appeal by the extended July 20, 2020 appeal deadline. The claimant did not take steps to file an appeal until January 10, 2021, almost six months after the appeal deadline. The late filing of the appeal was attributable to the claimant's inaction on the matter and was not attributable to IWD or to the United States Postal Service. Accordingly, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the July 9, 2020, reference 01, decision. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The claimant's appeal from the July 9, 2020, reference 01, decision was untimely. The decision that denied benefits for the period beginning April 5 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work, remains in effect.



James E. Timberland
Administrative Law Judge

March 25, 2021
Decision Dated and Mailed

jet/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**