

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MORGAN E BOESCHEN
Claimant

APPEAL NO. 20A-UI-16099-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERBRAND CABINETS INC
Employer

OC: 12/15/19
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, Morgan Boesch, filed a late appeal from the June 4, 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 within the meaning of the law. After due notice was issued, a hearing was commenced on February 1, 2021 and concluded on February 26, 2021. The claimant participated on February 1, 2021, but did not make herself available for the hearing on February 26, 2021. The employer did not provide a telephone number for the appeal hearing and did not participate in either hearing date. The hearing in this matter was consolidated with the hearing in Appeal Numbers 20A-UI-16100-JTT and 20A-UI-16101-JTT. Exhibit A, the appeal letter was received into evidence. The administrative law judge took official notice of the following Agency administrative record: The reference 01 fact-finding materials, the June 4, 2020 (reference 01) decision, the October 27, 2020 (reference 02) decision, the November 2, 2020 (reference 03) decision, KCCO, DBRO, KPYX, DBIN and KLOG.

ISSUES:

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: The claimant established an "additional claim" for benefits that was effective April 5, 2020. On June 4, 2020, Iowa Workforce Development mailed the June 4, 2020, (reference 01) decision to the claimant's Evansdale 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 within the meaning of the law. The reference 01 decision stated that it would become final unless an appeal was postmarked by June 14, 2020 or was received by the Appeal Section by that date. The weight of the evidence establishes that the claimant received the June 4, 2020 (reference 01) decision in a timely manner, prior to the deadline for appeal, but took no steps to

file an appeal from the decision by the June 14, 2020 appeal deadline or at any point prior to November 11, 2020.

On October 27, 2020, IWD mailed the October 27, 2020 (reference 02) overpayment decision to the claimant at her last-known address of record. The reference 02 decision held the claimant was overpaid \$1,487.00 in regular benefits for four weeks between April 12, 2020 and May 9, 2020 because of the earlier decision that denied benefits in connection with the availability determination. The reference 02 decision that it would become final unless an appeal was postmarked by November 6, 2020 or was received by the Appeals Bureau by that date. The weight of the evidence establishes that the claimant received the reference 02 decision in a timely manner, prior to the deadline for appeal. This was despite the claimant's failure to update her address with Iowa Workforce Development when she moved to Independence, Iowa in August 2020.

On November 2, 2020, Iowa Workforce Development mailed the November 2, 2020 (reference 03) decision to the claimant's last-known address of record. The reference 03 decision held the claimant was overpaid \$2,400.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the four-week period ending May 9, 2020, based on the October 27, 2020 decision that indicated she was not eligible for regular benefits. The reference 03 decision stated that it would become final unless an appeal was postmarked by November 12, 2020 or was received by the Appeals Bureau by that date.

On November 11, 2020, the claimant completed and transmitted an online appeal. The Appeals Bureau received the appeal the same day. The claimant did not update her mailing address with IWD until November 11, 2020, when she filed her online appeal.

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).

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 that the claimant's appeal from the June 4, 2020 (reference 01) decision was untimely. The weight of the evidence indicated that the claimant received the decision in a timely manner, had a reasonable opportunity to file an appeal by the deadline, but failed to take steps to file an appeal by the June 14, 2020 appeal deadline or at any point prior to November 11, 2020. The claimant engaged in a substantial amount of equivocation during her testimony. The claimant's statement that she could not recall whether she received the June 4, 2020 (reference 01) decision is insufficient to rebut the presumption that the decision mailed to her address of record on June 4, 2020 arrived at that address of record. The claimant's purported problem with receiving forwarded mail in August 2020 would have no impact on her receipt of a decision that was mailed to her in June 2020. Because the late filing of the appeal was attributable to the claimant, and not attributable to IWD or the United States Postal Service, 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 June 4, 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 was untimely. The June 4, 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 within the meaning of the law, remains in effect.



James E. Timberland
Administrative Law Judge

March 5, 2021
Decision Dated and Mailed

jet/scn

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.**