IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SARAH L HOWELL
Claimant

CAREAGE OF NEWTON LLC
Employer

APPEAL NO: 06A-UI-08527-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/12/06 R: 02
Claimant: Respondent (1)

Iowa Code section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Careage of Newton filed an appeal from the August 14, 2006, reference 04, decision that allowed benefits and deemed the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on September 11, 2006. Human Resources Director Andrea Kepple represented the employer. Claimant Sarah Howell did not participate. The administrative law judge took official notice of the Agency's administrative file and marked Department Exhibits D-1 through D-4 for identification purposes.

Claimant Sarah Howell provided two telephone numbers for the hearing, but could not be reached at either number at the scheduled start of the hearing. After the record had closed, the Appeals Section clerical staff brought to the administrative law judge's attention the fact that Ms. Howell had called in at 1:06 p.m. for the 1:00 p.m. hearing, which was still in progress at the time of the call. The clerical staff had attempted to contact the administrative law judge via computer to indicate the claimant was available to join the hearing, but the program the staff attempted to use was not operating correctly at the time. Because the administrative law judge had already entered a ruling on the record favorable to the claimant, that is that the employer's appeal was untimely, and because of the nature of the issue and the evidence that would be presented on such an issue, the administrative law judge concluded that no good cause existed to reopen the record to receive evidence from the claimant.

ISSUE:

Whether the employer's appeal was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The August 14, 2006, reference 04, decision was mailed to the employer's last-known address of record on August 14, 2006. The employer received the decision at its address of record on or before August 15. The address of record is the employer's facility in Newton. On August 15, the Newton staff forwarded the decision to Human Resources Director Andrea Kepple.

However, Ms. Kepple did not draft an appeal until August 25, 2006. The reference 04 decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 24, 2006. The appeal was not filed until August 25, 2006, the date on which the employer's faxed appeal was received at the Appeals Section.

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, 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-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 871 AC 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 871 IAC 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 record shows that the appellant did 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 not due to any Agency error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 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. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The Agency representative's August 14, 2006, reference 04, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/cs