

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

BRIDGETTE L GRIJALVA

Claimant,

and

TEMP ASSOCIATES

Employer.

:
:
:
:
:
:
:
:
:

HEARING NUMBER: 09B-UI-01662

EMPLOYMENT APPEAL BOARD
DECISION

SECTION: 96.6-2

D E C I S I O N

The claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT: On November 16, 2008 the Claimant filed a claim for benefits. On approximately November 25, 2008 the Claimant asked that her claim be canceled because she had received other employment. The claim was not canceled. When the Claimant learned this she spoke with a representative of Iowa Workforce Development who told her to ignore any further correspondence pertaining to this claim. The Claimant did so. In a decision dated January 16, 2009 the claims representative made a decision that disallowed benefits. The record does not reflect whether the Claimant received the decision in a timely fashion. The Claimant did receive at least one of the three decisions made that day. The Claimant, pursuant to her instruction, ignored any decision she would have received. When the Claimant subsequently filed what she thought was a new claim for benefits on January 21, 2009 she learned she at some point that she had been disqualified. At that time the Claimant filed her appeal to the Administrative Law Judge. The record does not reflect that the Claimant actually collected any benefits on her claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.6 provides:

2. *Initial determination.* ... 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.

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 - but not conclusive - evidence of the date of mailing.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have no authority to change the decision of representative if a timely appeal is not filed. Franklin v. Iowa Dept. Job Service, 277 N.W.2d 877, 881 (Iowa 1979). The ten day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. Messina v. Iowa Dept. of Job Service, 341 N.W.2d 52, 55 (Iowa 1983); Bearslee v. Iowa Dept. Job Service, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. E.g. Beardslee v. Iowa Dept. Job Service, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. Iowa Employment Sec. Commission, 217 N.W.2d 255 (Iowa 1974); Smith v. Iowa Employment Sec. Commission, 212 N.W.2d 471 (Iowa 1973). The question of whether the Employer has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ... appeal... 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."

Although the Administrative Law Judge had the Claimant describe a decision of January 16, 2009 the fact is the Claimant had three decisions on that date, two allowing benefits and one denying. It is not clear which one she was reading from at hearing. For the sake of analysis, however, we can assume the Claimant did receive the decision denying benefits in a timely fashion. This is because the Claimant credibly testified that she was told to ignore anything pertaining to the claim that she had tried to cancel. The Claimant therefore did as instructed by not pursuing the matter even if she did get the decision in a timely fashion. The error of Workforce in misinforming the Claimant is a proximate cause of the late appeal. Thus the late appeal is excused under 871-24.35(2).

DECISION:

The administrative law judge's decision dated February 24, 2009 is **REVERSED**. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall issue a decision on the merits of this case. The Administrative Law Judge may in the Administrative Law Judge's discretion conduct an additional hearing if the judge deems it necessary to develop issues that were not adequately addressed in the first hearing because of the disposition of the issue of timeliness. After the hearing, if any, the administrative law judge shall issue a decision that provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

Monique Kuester

RRA/ss