

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYANNA L LINDGREN

Claimant

APPEAL NO. 14A-UI-10821-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JEWISH FEDERATION
OF GREATER DES MOINES**

Employer

OC: 05/18/14

Claimant: Respondent (1-R)

Iowa Code Section 96.5(3) – Work Refusal
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the July 18, 2014, reference 01, decision that allowed benefits to the claimant and that held the employer's account could be charged, based on an Agency conclusion that at the time the claimant allegedly refused an offer of employment on November 9, 2013, she did not have a claim for unemployment insurance benefits. After due notice was issued, a hearing was held on November 4, 2014. Claimant participated. Gayle Brimeyer represented the employer. Exhibits A through E and Department Exhibits D-1 through D-5 were received into evidence.

ISSUES:

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

Whether the claimant refused an offer of suitable employment at a time when she had a claim for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On July 18, 2014, Iowa Workforce Development mailed a copy of the July 18, 2014, reference 01, decision to the employer's address of record. The decision allowed benefits to the claimant and held the employer's account could be charged, based on an Agency conclusion that at the time the claimant allegedly refused an offer of employment on November 9, 2013, she did not have a claim for unemployment insurance benefits. The decision carried on its face a July 28, 2014 deadline for appeal. The weight of the evidence indicates that the employer did indeed receive the decision in a timely manner, prior to the deadline for appeal. At the time the decision was mailed to the employer, Tom Wolff, Administrative Director, was the person responsible for handling such correspondence from Iowa Workforce Development. In July 2014, Gayle Brimeyer became an office manager for the employer and began to shadow Mr. Wolff. Ms. Brimeyer was not fully cognizant of all of Mr. Wolff's activities, including activities related to

the employer's receipt of the July 18, 2014, reference 01, decision or response to the same. Mr. Wolff has since separated from the employer.

On October 15, 2014, Iowa Workforce Development mailed to the employer a quarterly Notice of Reimbursable Benefit Charges. The Notice contained charges for benefits paid to the claimant, Lyanna Lindgren. The Notice was actually the second such quarterly notice mailed to the employer that contained charges for benefits paid to Ms. Lindgren. On July 15, 2014, Iowa Workforce Development mailed a quarterly Notice of Reimbursable Benefit Charges to the employer for the quarter that ended June 30, 2014. That Notice contained a \$2,040.00 charge for benefits paid to Ms. Lindgren. On October 16, 2014, Ms. Brimeyer faxed protest materials to the Appeals Section, which materials the Appeals Section received on October 16, 2014 and interpreted as an appeal from the July 18, 2014, reference 01, decision regarding an alleged work refusal.

Claimant Lyanna Lindgren established a claim for unemployment insurance benefits that was effective May 18, 2014. The alleged work refusal dates from November 2013.

REASONING AND CONCLUSIONS OF LAW:

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-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 weight of the evidence shows that the employer/appellant did indeed receive the July 18, 2014, reference 01, decision in a timely manner, prior to the deadline for the appeal. The law presumes receipt of a mailed notice properly addressed and otherwise conforming to postal laws and regulations concerning postage. Eves v. Iowa Employment Security Commission, 211 N.W.2d 324, 327 (Iowa 1973). The employer had presented insufficient evidence to rebut that presumption.

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 Workforce Development 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).

In the event this decision regarding timeliness of appeal is reversed in favor of the employer upon further appeal, there is sufficient evidence to decide the work refusal issue.

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Because the alleged work refusal predates Ms. Lindgren's unemployment insurance claim by several months, even if there was a refusal of suitable work in November 9, 2013, it would not disqualify Ms. Lindgren for benefits under the work refusal statute, Iowa Code section 96.5(3).

DECISION:

The July 18, 2014, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the claims deputy remains in effect. The claimant is not disqualified for benefits based on an alleged work refusal in November 2013. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Benefits Bureau for further action as it deems appropriate, if any, on the separation issues and on the employer's June 2, 2014 incomplete protest materials.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs