

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LEAH J SANDERS
Claimant

ABRH LLC
Employer

APPEAL NO. 20A-UI-10710-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Respondent (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 95.5(2)(a) – Discharge

STATEMENT OF THE CASE:

The employer filed a late appeal from the July 20, 2020, reference 01, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 2, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on October 20, 2020. Claimant Leah Sanders participated personally and was represented by Marc Sanders. Connie Hickerson of Equifax represented the employer and presented additional testimony through Doug Akers. Exhibit 1 was received into evidence. The administrative law judge took official notice of the July 20, 2020, reference 01, decision.

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 20, 2020, Iowa Workforce Development mailed the July 20, 2020, reference 01, decision to the employer at the employer's last-known address of record. The employer's authorized agent of record was at all relevant times Equifax/Talx. The employer's last-known address of record is an Equifax/Talx's United States Postal Service post box in Saint Louis, Missouri. The July 20, 2020, reference 01, decision allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 2, 2020 for no disqualifying reason. The reference 01 decision stated that the decision would become final unless an appeal was postmarked by July 30, 2020 or received by the Appeal Section by that date. The decision provided clear and concise instructions for filing an appeal online via the IWD website, by email, by fax, and by regular mail. The reference 01 decision arrived at the employer's address of record, the Equifax/Talx processing center, in a timely manner, prior to the deadline for appeal. Iowa Workforce Development had also mailed the decision to the claimant on July 20, 2020 in an envelope that bore a July 20, 2020 postmark. At the time Equifax/Talx received the July 20, 2020 decision, Equifax/Talx was dealing with a high volume of

unemployment insurance correspondence. Equifax/Talx's mailroom did not begin to process the July 20, 2020, reference 01, decision until August 31, 2020, more than a month after the appeal deadline has passed. On September 2, 2020 Equifax/Talx electronically routed the decision to an agent, who prepared a largely boilerplate, form letter appeal. Equifax/Talx faxed the appeal to the Appeals Bureau on September 2, 2020 and the Appeals Bureau received the appeal on that same day.

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. IDS*, 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). One 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 in the record establishes an untimely appeal. The weight of the evidence establishes that the July 20, 2020, reference 01, decision was mailed to the employer's address of record on July 20, 2020, that the employer's agent received the decision in a timely manner, but that the employer's agent, for reasons internal to Equifax, delayed initiating action on the matter until August 31, 2020. The administrative law judge specifically finds neither reliable nor credible Ms. Hickerson's assertion that the decision was not received until August 31, 2020. Neither the employer nor its agent, Equifax/Talx presented testimony from anyone with personal knowledge regarding receipt of the decision, processing of the decision, preparation of the appeal, or transmission of the appeal. Ms. Hickerson concedes she was not involved in receipt of the decision, processing the decision, or preparing or filing the appeal. The appeal letter itself refutes Ms. Hickerson's assertion. The appeal says nothing of delayed receipt of the decision and instead specifically states "the processing of this determination was delayed. this appeal was filed as soon as possible after the delay was resolved." The appeal process is streamlined by design. The decision itself contains all the information necessary to file an appeal. Filing an appeal may be accomplished in a matter of a few minutes and with minimal effort. Indeed, the employer's own evidence indicates that once Equifax eventually turned the matter an appeal was prepared and filed with minimal time and effort involved. The employer's agent did indeed have a reasonable opportunity to file an appeal by the July 30, 2020 appeal deadline. The delay in filing the appeal was entirely attributable to Equifax's internal processes and not attributable to Iowa Workforce Development or 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). Not only was the appeal not timely filed, but the unreasonable delay continued for more than a month beyond the appeal deadline. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the July 20, 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 employer's appeal was untimely. The July 20, 2020, reference 01, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 2, 2020 for no disqualifying reason, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

October 22, 2020
Decision Dated and Mailed

jet/sam