

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE L DEROSEAR
Claimant

APPEAL NO. 17A-UI-03881-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARTOLOMEI & LANGE, P L C
Employer

OC: 03/12/17
Claimant: Appellant (1)

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Ms. Dale L. Derosear (Claimant) filed an appeal from a representative's unemployment insurance decision dated March 27, 2017, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work on March 12, 2017 without good cause attributable to the employer. After due notice was provided, a hearing was held by telephone on May 3, 2017. Claimant participated. The claimant had one witness, Douglas Derosear, her spouse. The employer participated by Mr. Richard Bartolomei and Denise Lange, Partners, Bartolomei & Lange P.L.C. and witnesses Denise Donaldson and Tammy Darnell.

ISSUE:

At issue in this matter is whether the appeal filed herein was timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: a disqualification decision was mailed to the claimant's last known address of record on March 27, 2017. The claimant received the decision on March 29, 2017. The decision contained a warning that an appeal must be postmarked or received by the appeals sections by April 5, 2017. The appeal was not filed until April 7, 2017 which is after the date noticed on the disqualification decision.

Ms. Derosear received the disqualification decision on March 29, 2017, two days after it was mailed to the claimant's address of record. The information contained in the disqualification decision is arranged in seven short paragraphs consisting of not more than three sentences each. The second paragraph from the bottom states "This decision becomes final unless and appeal is postmarked by 04/06/17, or received by the Iowa Workforce Appeal Section by that date. This paragraph is followed by the statement "If you have questions please call customer service at 866-239-0843."

Between March 29, 2017 and April 6, 2017, Ms. Derosear underwent her final cancer treatment. Thursday, April 6, 2017, was the due date for her appeal to be received by the Appeal Section or postmarked; Ms. Derosear elected not to deposit her appeal with the US Postal Service that

day, but instead to wait until the following day, April 7, 2017 to submit her appeal electronically. Ms. Deroser believed that the Appeal would arrive at the Appeal Section sooner than if she had mailed it by the US Postal Service on April 6, 2017. The claimant's appeal from the disqualification decision was received electronically on April 7, 2017; one day after the statutory appeal period had expired.

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . 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.

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service 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 is 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.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

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 the entry column, is presumed evidence of the date of mailing. *Gaskins v. Unemployment Compensation Board of Review*, 420A nd 138 (PA. Common Wealth 1981) and *Johnson, the Board of Adjustment* 239 NW 2nd 873, 92 ALR 3rd 304 (1976).

Pursuant to rules 871 IAC 26.2 (96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v Iowa Dep't of Job Serv.*, 314 N.W.2d 5 .2 (Iowa 1983).

The record in this case shows that more than ten calendar days that last between the mailing date and the date the appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representative's decisions within the time limit allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal has not been filed. *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of the case showed the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979), See also Enray Appeal of Elliott, 319 N.W. 2d 244, 247 (Iowa 1988).

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. Ives*, 217 N.W.2d 255 (Iowa 1974) and *Smith v. Ives*, 212 N.W.2d 471, 472 (Iowa 1973). The records show that the appellant did have a reasonable opportunity to file a timely appeal. Ms. Derosear received the decision at her address of record on March 29, 2017 and had at least seven calendar days in which to read the decision in its entirety and file an appeal.

The administrative law judge concludes that the claimant's failure to file a timely appeal within the time limit 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 pursuant to 871 IAC 4.35(2)*. The administrative law judge further concludes that the appeal was not filed timely pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's appeal in this matter.

DECISION:

The decision of the representative dated March 27, 2017, reference 01 is hereby affirmed. The appeal in this case was not timely and that the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

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