

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFREY J MILLER

Claimant

7 HILLS BREWING CO LLC

Employer

APPEAL 20A-UI-01552-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/03/19

Claimant: Respondent (1)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal to the initial decision dated March 15, 2019, (reference 02) which allowed benefits, concluding the claimant had not failed to accept a suitable offer of work while he had a valid claim for unemployment insurance benefits. After proper notice, a telephone hearing was held on March 9, 2020. The hearing was held jointly with Appeal 20A-UI-01553-JC-T. The claimant participated personally. The employer participated through Abigail Gutierrez, owner.

At the hearing, it was identified that the issue of whether the employer filed a timely appeal was properly noticed. The other issues listed on the hearing notice were not applicable. The administrative law judge advised the parties that if the employer's appeal was deemed timely filed, a new hearing would be reset to give the parties proper notice of the correct issues, which would include whether the claimant refused a suitable offer of work and whether the claimant was able and available for work.

Official notice was taken of the administrative record. Department Exhibits D-1 through D-4 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the employer's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for employer from August 7, 2017 - April 24, 2018.) Claimant filed a claim for unemployment insurance benefits with an effective date of March 3, 2019.

The employer responded to the notice of claim with incorrect information. Thereafter, a notice of initial decision was mailed to the employer's address of record on March 15, 2019, allowing benefits. The employer stated it was confused by the decision due to a lack of language addressing whether the employer should or would be charged. The initial decision stated, "if

you have questions, please call customer service at 866-239-0843” (Department Exhibit D-2). Employer did not contact customer service.

The decision also stated that an appeal must be filed by March 25, 2019 or else the decision would become final (Department Exhibit D-2). Employer received the initial decision within the prescribed period to appeal but “filed it away, assuming the employer would not be charged” (Gutierrez testimony).

Upon receiving its fourth quarter statement of charges for 2019, which was mailed on February 7, 2020, the employer realized its account was not relieved of charges for this claimant and filed an appeal by mail on February 18, 2020 (Department Exhibit D-4).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the employer’s appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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(2) provides:

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

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document 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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 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).

The record in this case shows 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Pursuant to rules Iowa Admin. Code r. 871- 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.*, 341 N.W.2d 52 (Iowa 1983).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The employer did not contact IWD with questions when it was unsure whether it would be charged for benefits, which caused the delay in filing the appeal. The administrative law judge concludes that failure to follow the clear written instructions 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* pursuant to Iowa Admin. Code r. 871-24.35(2).

The administrative law judge further concludes that the appeal was not timely filed 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 appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979). As a result, at this time no further hearing will be scheduled to address whether the claimant refused a suitable offer of work and whether the claimant was able and available for work

DECISION:

The March 15, 2019, (reference 02) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
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Decision Dated and Mailed

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