

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SISOUK CHANTHINOUVONG
Claimant

APPEAL NO. 21A-UI-15727-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO**
Employer

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a late appeal from the August 18, 2020, reference 01, decision that denied benefits for the period beginning March 29, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. After due notice was issued, a hearing was held on September 8, 2021. Claimant participated and presented additional testimony through Kendra Lowe. Pam Anderson represented the employer. There were three matters set for a consolidated hearing: 21A-UI-15727-JTT, 21A-UI-15728-JTT and 21A-UI-15729-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KPYX, KCCO, and the reference 01 through reference 04 decisions. Lao-English interpreter Thavone Washer (22623) of CTS Language Link assisted with the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$416.00. The claimant filed his claim in response to being laid off from his employment with Prairie Meadows Racetrack & Casino, where the claimant worked as a full-time valet. The claimant made weekly claims for benefits that included weekly claims for the five weeks between March 29, 2020 and May 2, 2020. However, the employer paid the claimant wages that exceeded \$700.00 per week for each of those five weeks.

On August 18, 2020, Iowa Workforce Development mailed two decision to the claimant's Des Moines last-known address of record. The reference 01 decision denied benefits for the period beginning March 29, 2020, based on the deputy's conclusion that the claimant was not partially unemployed. The reference 02 decision allowed benefits effective May 3, 2020,

provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, and on a short-term layoff. Both decisions stated the decision would become final unless an appeal was postmarked by August 28, 2020 or was received by the Appeal Section by that date. The claimant received both decisions in a timely manner, prior to the deadline for appeal. The claimant is a non-native English speaker, but is able to speak and read English. The claimant at all relevant times had access to the assistance of his bilingual daughter. The claimant did not take steps to file an appeal from the reference 01 decision by the August 28, 2020 deadline or at any point prior to July 12, 2021. On July 1, 2021 and on July 2, 2021, Iowa Workforce Development mailed overpayment decisions to the claimant. On July 12, 2021, the claimant completed an online appeal with the assistance of his daughter. The Appeals Bureau received the appeal on July 12, 2021 and treated it as also an appeal from the August 18, 2020, reference 01, decision.

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. 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 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). 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 claimant's appeal from the August 18, 2020, reference 01, decision was untimely. The claimant received the decision in a timely manner and had a reasonable opportunity to file an appeal by the August 28, 2020 deadline, but delayed filing the appeal until July 12, 2021. The late filing of the appeal was not attributable to Iowa Workforce Development or the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, The administrative law judge lacks jurisdiction to disturb the August 18, 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).

Even if the claimant's appeal has been timely, the evidence would have established that the claimant was not partially unemployed, and not eligible for benefits, during the period of March 29, 2020 through May 2, 2020, because the employer continued to pay the claimant his full-time wages during that period. See Iowa Code section 96.1A(37)(b) (An individual shall be deemed partially unemployed in any week in which the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars).

DECISION:

The claimant's appeal from the August 18, 2020, reference 01, decision was untimely. The decision that denied benefits for the period of March 29, 2020 through May 2, 2020, based on the deputy's conclusion that the claimant was not partially unemployed, remains in effect.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

September 16, 2021
Decision Dated and Mailed

jet/mh