

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELMER L IVES
Claimant

APPEAL NO. 09A-UI-17516-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**Original Claim: 01/25/09
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated November 5, 2009, reference 05, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 28, 2009. The claimant participated. The employer participated by Sarah Fiedler, claims administrator. The record consists of the testimony of Delmer Ives. Official notice is taken of the agency file.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

A representative's decision dated November 5, 2009, stated that the claimant was not eligible to receive unemployment insurance benefits and that benefits were denied as of October 11, 2009. In that decision, the representative also stated that the decision was final unless an appeal was postmarked by November 15, 2009, or received by Iowa Workforce Development Appeal Section by that date. Since November 15, 2009, fell on a Sunday, the due date was extended to November 16, 2009. The claimant did not file his appeal until November 19, 2009.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

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).

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. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 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 record shows that the appellant did have a reasonable opportunity to file an appeal postmarked as timely.

The administrative law judge concludes that the failure to have the appeal timely postmarked within the time prescribed by the Iowa Employment Security Law was not due to error, misinformation, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The claimant never attempted to utilize the postal service. Rather, he took his appeal to the local workforce office after the due date. Had he brought the appeal to the local workforce office on or before the due date, it would have been timely. There is no evidence of agency error.

Since the claimant's appeal is not timely, the administrative law judge has no jurisdiction to rule on the merits of the claimant's claim for unemployment insurance benefits.

DECISION:

The representative's decision dated November 5, 2009, reference 05, is affirmed. The claimant failed to file a timely appeal. The representative's decision concluding the claimant is not eligible for benefits remain in full force and effect.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw