

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRAIG M SWARD

Claimant

APPEAL 19A-UI-08012-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE CEC – DAVENPORT WORKS

Employer

OC: 09/01/19

Claimant: Appellant (1-R)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On October 15, 2019, Craig M. Sward (claimant) filed an appeal from the September 25, 2019, reference 01, unemployment insurance decision that denied benefits effective September 1, 2019 based upon the determination he was still employed in the same hours and wages and could not be considered partially unemployed. After due notice was issued, a telephone conference hearing was held on November 4, 2019. The claimant participated personally. The employer participated through Koann Schaefer, Labor Relations Representative. The Department's Exhibits D1 and D2 were admitted into the record.

ISSUE:

Is the claimant's appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective September 1, 2019, in preparation for a lay-off scheduled for the week beginning September 22, 2019. He reported wages earned for the three weeks prior to the layoff. As a result, the agency determined the claimant was not considered partially unemployed as he was working the same hours and wages and denied benefits effective September 1, 2019 under Iowa Code section 94.6(3). The denial is in effect until the claimant becomes totally or temporarily unemployed. The claimant has filed for benefits and not reported any wages earned for the weeks ending September 28 and November 2 when he was temporarily laid off by the employer.

The disqualification decision was mailed to the claimant's last known address of record on September 25, 2019. He received the decision, although he does not know when. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 5, 2019. The appeal was not filed until October 15, 2019, which is after the date noticed on the disqualification decision, because the claimant mistakenly believed the decision he received only affected the first week he filed for benefits and threw the decision away. He

did not contact Iowa Workforce Development (IWD) until he learned his co-workers had received their unemployment benefits but he had not.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant'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. Bd. 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).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The appellant filed his appeal after the appeal date and has not established that the delay was due to any error or misinformation on the part of IWD or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, 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).

The issues of total, partial, and temporary unemployment and a claimant's ability to and availability for work can change on a week-by-week basis. Whether the claimant is temporarily unemployed and eligible for benefits for the weeks ending September 28 and November 2 is remanded for a fact-finding interview, if necessary, to include both parties and an unemployment insurance decision with appeal rights issued to both parties.

DECISION:

The September 25, 2019, reference 01, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

REMAND:

The issues of total, partial, and temporary unemployment and a claimant's ability to and availability for work can change on a week-by-week basis. Whether the claimant is temporarily unemployed and eligible for benefits for the weeks ending September 28 and November 2 is remanded for a fact-finding interview, if necessary, to include both parties and an unemployment insurance decision with appeal rights issued to both parties.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn