

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NATHAN M GROOMS
Claimant

APPEAL NO. 21A-UI-00169-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 08/30/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the November 20, 2020, reference 01, 2020 decision that allowed benefits to the claimant for the period beginning August 30, 2020, provided he met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily laid off. After due notice was issued, a hearing was held on February 3, 2021. Claimant participated. Alyce Smolsky of Equifax represented the employer and presented testimony through Lisa Durnell and Kaitlyn Lewis. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 20, 2020, Iowa Workforce Development mailed the reference 01 decision to the employer's last-known address of record, a Talx/Equifax post office box in St. Louis, Missouri. The weight of the evidence establishes that the decision was delivered to the post office box in a timely manner, prior to the deadline for appeal. The decision allowed benefits to the claimant for the period beginning August 30, 2020, provided he met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily laid off. The decision stated that the decision would become final unless the appeal was postmarked by November 30, 2020 or was received by the Appeal Section by that date. The weight of the evidence establishes that the decision was delivered to the Talx/Equifax mailbox in a timely manner, prior to the deadline for appeal. Neither Talx/Equifax nor the employer filed an appeal by the November 30, 2020 deadline. On December 2, 2020, Talx/Equifax's mail processing staff scanned the decision into the Talx/Equifax computer system and routed the decision to Lisa Durnell, Unemployment Hearings Consultant. On December 3, 2020, Ms. Durnell drafted an appeal and faxed the appeal to the Appeals Bureau. The Appeals Bureau received appeal on December 3, 2020.

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 evidence in the record establishes an untimely appeal. The employer presented insufficient to rebut the presumption that Iowa Workforce Development and the United States Postal Service performed their respective duties in a timely and accurate manner to ensure timely delivery of the decision to the employer's address of record. The employer presented no testimony from persons with personal knowledge of the date the decision arrived at the post office box or the date Equifax/Talx collected the decision from the post office box. Ms. Durnell's speculation as to Equifax's actions prior to routing the decision to her on December 2, 2020 is insufficient to rebut the presumption of timely delivery. The weight of the evidence establishes that employer's representative had a reasonable opportunity to file a timely appeal, but delayed processing the correspondence until after the appeal deadline had passed. 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 November 20, 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).

DECISION:

The employer's appeal was untimely. The November 20, 2020, reference 01, 2020 decision that allowed benefits to the claimant for the period beginning August 30, 2020, provided he met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily laid off, remains in effect.

In the event this decision regarding timeliness of appeal is reversed upon further appeal, there is sufficient evidence in the record for a decision on the merits without need for further hearing.



James E. Timberland
Administrative Law Judge

February 22, 2021
Decision Dated and Mailed

jet/scn